602

SUPREME COURT OF THE UNITED STATES.

No. 196.

HENRY M. RECTOR AND WILSON STIDHAM, PL'FFS IN ER.,

vs.

WILLIAM H. GAINES AND MARIA GAINES, HIS WIFE, ALBERT BELDING, HENRY BELDING, AND GEORGE BELDING, HEIRS AND LEGAL REPRESENTATIVES OF LUDOVICUS BELDING, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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STATE OF ARKANSAS,
In the Supreme Court.

Be it remembered that at a supreme court of the State of Arkansas, begun and held at the court-house, in the city of Little Rock, on the 6th day, being the first Monday in July, A. D. 1857, before the Hon. Christopher C. Scott and Hon. Thomas B. Hanly, judges, were the following proceedings on the 1st day of August of said term:

HENRY M. RECTOR et al., appellants,
vs.
WILLIAM H. GAINES and Wife et al., appellees.
} Appeal from Hot Spring circuit court.

Be it remembered that heretofore, to wit, on the 10th day of December, A. D. 1855, said appellants filed in the office of the clerk of said supreme court the transcript of the record of said circuit court in this cause, as follows:

Trans. of Ct. Ct.

THE STATE OF ARKANSAS,
County of Hot Spring.

At a circuit court begun and holden in and for the county of Hot Spring, in the State of Arkansas, at the court-house, in the town of Rockport, on the last Monday of February, A. D. 1852, being the twenty-third day of said month,—present, the honorable John C. Murray, judge of the second judicial circuit of said State,—the following proceedings amongst others were had, to wit:

WILLIAM H. GAINES and Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding,
vs.
HENRY M. RECTOR and Wilson Steadham.
} Ejectment.

Declaration.

STATE OF ARKANSAS,
County of Hot Spring, set.

In the Hot Spring circuit court, to the February term thereof, 1852.

William H. Gaines and Maria Gaines, his wife, formerly Maria Belding, Albert Belding, and Henry Belding, attorney, and George

Belding, a minor, by James M. Curran, his next friend, plaintiffs in this suit, complains of Henry M. Rector and Wilson Steadham, defendants herein, of a plea of ejectment.

For the said plaintiffs declare and say, that heretofore, to wit, on the 20th day of December, A. D. 1851, at the county aforesaid, they, the said plaintiffs, were lawfully entitled to the possession of certain premises situate in said county of Hot Spring, and within the jurisdiction of this court, to wit, a certain tract or parcel of land known and described upon the plats of the public surveys as the southwest quarter of section thirty-three, (33,) in township two south, of range nineteen (19) west, containing one hundred and sixty acres, together with the buildings and improvements, privileges, appurtenances, and rights thereunto appertaining and belonging, and the said plaintiffs being so entitled to the possession thereof, they, the said defendants, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, entered into the said premises and ejected the said plaintiffs therefrom, and unlawfully withheld from said plaintiffs the possession thereof.

2. And said plaintiffs further declare and say, that heretofore, to wit, on the 20th day of December, A. D. 1851, at the county aforesaid, they, the said plaintiffs, were lawfully entitled to the possession of certain other premises and messuages, with the appurtenances, situate in said county of Hot Spring, described as all that part of a certain tract or parcel of land designated upon the plat of the public surveys as the southwest quarter of section thirty-three, (33,) in township two (2) south, of range nineteen (19) west, which lies north and above the dividing line heretofore established and observed by one Milas H. Woods and John C. Hale between their respective possessions on said quarter-section of land, and including all the houses, buildings, and improvements occupied and used by Warren & Steadham, during the summer of the year 1851, as a tavern stand, being all that part of said quarter-section of land, and the houses and improvements thereon, situate north or above the premises commonly known as Hale's tavern stand; and the said plaintiffs being so entitled to the possession thereof, they, the said defendants, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, entered into the said premises and messuages and ejected the said plaintiffs therefrom, and unlawfully withhold from said plaintiffs the possession thereof. Wherefore said plaintiffs say they are injured and have sustained damages to the sum of ten thousand dollars, and therefore they sue, &c.

WILLIAM H. GAINES,
MARIA GAINES,
ALBERT BELDING,
HENRY BELDING,
By WATKINS & CURRAN, their att'ys.
GEORGE BELDING,
By J. M. CURRAN, his next friend.

CLERK'S OFFICE OF HOT SPRING CIRCUIT COURT,
January 5, 1852.

On application of George Belding, a minor, I do hereby constitute and appoint James M. Curran to appear and prosecute the suit to be founded upon the foregoing declaration as the next friend of said George, according to the statute in such cases made and prescribed.

Attest: JOHN JESTER, *Clerk.*

I do accept the foregoing appointment, and consent to appear and act as the next friend of said George Belding in the prosecution of said suit. Jan'y 5, 1852.

J. M. CURRAN.

Endorsements on bill: William H. Gaines and Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, vs. Henry M. Rector and Wilson Steadham. Ejectment. Declaration filed Jan'y 5, 1852. John Jester, clerk. Watkins & Curran.

STATE OF ARKANSAS,
County of Hot Spring, ss.

The State of Arkansas to the sheriff of the county of Hot Spring aforesaid, greeting:

You are hereby commanded to summon Henry M. Rector and Wilson Steadham, if they be found within your bailiwick, to be and appear before the judge of our circuit court of Hot Spring county aforesaid, on the first day of the next term thereof, at a court to be holden at the court-house, in the town of Rockport in said county, on the last Monday of February, A. D. 1852, then and there to answer the complaint of William H. Gaines and Maria Gaines, his wife, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, of a plea of ejectment to the damage of the said plaintiffs of ten thousand dollars; and have you then and there this writ.

In testimony whereof, I, John Jester, clerk of said circuit court, have hereto set my hand as such clerk, and affixed the [L. S.] seal of said court, at my office, in said county, this 5th day of January, A. D. 1852.

JOHN JESTER, *Clerk.*

I do hereby certify that I executed the within writ on the within-named Wilson Steadham, in the county of Hot Spring, on the 6th day of January, A. D. 1852, by then and there reading the same to him and [in] his presence and hearing, in the same county.

CYRUS A. HALE,
Sheriff of Hot Spring County, Ark.

The within-named Henry M. Rector is not to be found within my county, and I so certify.

CYRUS A. HALE, *Sheriff.*
By W. S. MOREHEAD, *D. S.*

Endorsements on writ: Wm. H. Gaines et al. vs. Henry M. Rector & Wilson Steadham. 4. Ejectment. Writ of summons. Watkins & Curran.

Proceedings had on the 24th day of February, A. D. 1852.

WILLIAM H. GAINES et al.
vs. } 4. Ejectment.
HENRY M. RECTOR & WILSON STEADHAM.

Came the parties by attorney, and on leave asked and obtained, the defendants file their plea herein.

ARKANSAS, *set.*

In Hot Spring circuit court, February term, A. D. 1852.

WILLIAM H. GAINES et al.
vs. } 4. Ejectment.
HENRY M. RECTOR & WILSON STEADHAM.

Plea.

Come said defendants and say they, or either of them, are not guilty of the trespass and ejectments, or any or either of them, in the said declaration mentioned and laid to their charge; and of this they put themselves upon the country, &c.

PIKE & CUMMINS, *Att'ys.*

WM. H. GAINES et al.
vs.
H. M. RECTOR & W. STEADHAM.

Not guilty.
Filed Feb'y 24, 1852.

JOHN JESTER, *Clerk.*

On leave asked and obtained, by consent the plaintiffs take issue, in short, on the record herein.

Proceedings had on 26th February, 1852.

WILLIAM H. GAINES & Wife et al.
vs. } 4.
HENRY M. RECTOR & WILSON STEADHAM.

Came the defendants by attorney, and on leave asked and obtained, file their motion for a continuance herein.

ARKANSAS, *set.*

In the Hot Spring circuit court, February term, A. D. 1852.

WILLIAM H. GAINES et al.
vs.
H. M. RECTOR and WILSON STEADHAM. } Ejectment.

Said defendants come and move the court here to continue this cause until the next term of this court, and thereupon they state and aver that their various instruments *instruments* of evidence, and evidence indispensably necessary to their defence in this cause, not now in their possession or capable of being now produced in evidence, and which, from the shortness of the time since the institution of this suit to the present time, and since they were advised of the nature of plaintiff's title and the necessary means of defence, it has been impossible for them to procure to be read as evidence at this term; that by the documents and evidence hereinafter mentioned in connection with the acts of Congress and other evidence now in their possession, these defendants expect and believe they shall be able to procure and establish that the pretence of claim and title set up by the said plaintiffs is wholly invalid, and not such as to warrant a recovery by plaintiffs in this action; but that, on the contrary, that these defendants and those under whom they claim have a valid but incoherent title to the premises sued for, that is, a patent certificate from the proper government authorities, a title similar in its nature and effect to that claimed by said plaintiffs, and much older date; and that defendants and those from whom they claim have had the occupancy and possession of the premises sued for for many years anterior to the existence of said pretended title of said plaintiffs; which instruments of evidence, not now in their possession, are as follows, to wit: 1st. The decision of the Secretary of the Interior in reference to a certain pre-emption claim to the same lands set up and pretended to by said plaintiffs as heirs of L. Belding. 2d. A deed from Francis Langloise to Joseph Story, of the land of Langloise, situate in New Madrid county, in the State of Missouri, which land was injured by earthquake, and on account of the loss of which Langloise obtained the certificate of location under certain acts of Congress, and under whom defendants claim. 3d. The opinion of the Attorney General, C. Johnson, of the United States, affirming the validity of the New Madrid location of Francis Langloise, upon the premises in question, in virtue of said act of Congress in respect of the New Madrid grant. 4th. The order of Thomas Ewing, Secretary of the Interior, to the Commissioner of the General Land Office in requiring the issuance of the patent upon the land claim of Francis Langloise for the premises in question. 5th. The decision of the Hon. R. J. Walker reversing the decision of the Commissioner of the General Land Office in reference to the said claim of said Langloise. 6th. Copies

of various letters of the Commissioner of the General Land Office, James Whitcomb, recognizing the validity of the said New Madrid location. 7th. Copy of the decision of the land office at Washington, Arkansas, upon the primary adjudication of the pretended pre-emption right set by said plaintiffs as heirs of L. Belding. 8th. A copy of the field notes and plat of township 2, south of range 19 west, wherein are included the premises in question. 9th. Copy of the application, proof, and entry of Mrs. Belding, under the extension of the act of 1830, of a quarter section of land on the Gulphen. 10th. Copy of the application, proof, &c., of Mrs. Belding, made at the register's office in 1839, to establish a pre-emption to the Hot Springs. 11th. Original deed of relinquishment from L. Belding to Percifull of all his right, title, and interest to the improvement at the Hot Springs, on file at Washington:

That all these documents are in existence as they believe, are susceptible of full proof, and they expect and believe they will be able by the next term of this court to procure each and all such documents, and proper and legal proofs thereof, so as to be read as evidence herein.

That this application is not made for delay, but that justice may be done; said documents can duly be procured, or proper evidence thereof, at Washington city, St. Louis, Missouri, and only part of their proceeding in this State; and not having said documents or copies in possession they cannot now specially describe the name or point out and name the particular witness by whom any such documents, requiring oral proof, may be established.

H. M. RECTOR.

Sworn to and subscribed before me, this 26th day of February, 1852. JOHN JESTER, *Clerk.*

WM. H. GAINES et al.
vs.
H. M. RECTOR and Wilson Steadham. } Motion to continue.

Filed February 26th, 1852.

JOHN JESTER, *Clerk.*

Proceedings had on the 27th February, 1852.

WILLIAM H. GAINES and Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding,
vs.
HENRY M. RECTOR and Wilson Steadham. } 4. Ejectment.

Came the parties, by attorney, and said motion is submitted and by the court sustained.

Therefore it is by the court considered that said plaintiffs recover against said defendants all their costs of this term in this behalf expended; and this suit is continued.

STATE OF ARKANSAS,
County of Hot Spring.

At a circuit court begun and holden in and for the county of Hot Spring, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of August, 1852, being the 30th day of said month: Present and presiding the Hon. Shelton Watson, judge of the sixth judicial circuit of said State, who holds this court pursuant to an arrangement with the Hon. John C. Murray, judge of the second judicial circuit of said State.

Proceedings had on the 1st day of September, 1832.

WM. H. GAINES et al.
vs.
HENRY M. RECTOR & WILSON STEADHAM. } 4.

Came the parties by attorney; and on motion and by consent it is ordered that this suit be continued.

STATE OF ARKANSAS,
County of Hot Spring.

At a circuit court begun and holden in and for the county of Hot Spring, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of February, 1854, being the 27th day of said month: Present and presiding the honorable John C. Murray, judge of the second judical circuit of said State.

Proceedings had on the 27th day of February, 1854.

WILLIAM H. GAINES and others
vs.
RECTOR & STEADHAM. } 4. Ejectment.

Came the parties by attorney; and this suit is continued.

STATE OF ARKANSAS,
County of Hot Spring.

At a circuit court begun and holden in and for the county of Hot Spring, in State of Arkansas, at the court house in the town of Rockport, on the last Monday of August, 1854, being the 28th day of said month: Present and presiding the Hon. Theodorick F. Sorrells, judge of the second judicial circuit of said State.

Proceedings had on the 28th of August, 1854.

WM. H. GAINES et al.
vs.
HENRY M. RECTOR & WILSON STEADHAM. } 4. Ejectment.

Came the parties by attorney, and by consent it is ordered that this cause be continued without prejudice.

THE STATE OF ARKANSAS,
County of Hot Spring.

At a circuit court begun and holden in and for the county of Hot Spring, in the State of Arkansas, at the court-house in the town of Rockport, on the last Monday of February, 1855, being the 26th day of said month: Present and presiding, the honorable Theodorick F. Sorrels, judge of the second judicial circuit of said State, judge:

Proceedings had on the 26th day of February, 1855.

WILLIAM H. GAINES et al.
vs.
HENRY M. RECTOR & W. STEADHAM. } Ejectment.

Came the parties by attorney, and on motion and by consent it is ordered that this suit be continued.

STATE OF ARKANSAS,
County of Hot Spring.

At a circuit court begun and holden in and for the county of Hot Spring, in the State of Arkansas, at the court-house in the town of Rockport, on the last Monday of August, 1855, being the 27th day of said month: Present and presiding, the honorable Theodoric F. Sorrels, judge of the second judicial circuit of said State, judge; absent, the honorable Theodoric F. Sorrells, judge; present and presiding, the honorable John C. Murray, special judge.

Special Judge's Commission.

It is ordered that the commission of the special judge be spread on the records of the court, which is accordingly done.

The State of Arkansas, to all [to] whom these presents shall come, greeting:

Know ye, that reposing special trust and confidence in the ability, honesty, and law knowledge of John C. Murray, and by virtue of the authority in me vested by an act of the general assembly of the State of Arkansas, entitled "An act making appropriation for the

years eighteen hundred and fifty-five, eighteen hundred and fifty-six, and a part of the year eighteen hundred and fifty-four, and for the balance due from the State," approved January 12th, 1855, I, Elias N. Conway, Governor of the State of Arkansas, do hereby appoint him, the said John C. Murray, special judge of the circuit court, to adjudicate, try, and determine certain causes pending in said circuit court, in Hot Spring county, in the second judicial circuit in the State of Arkansas, from adjudicating which causes T. F. Sorrells, judge of the second judicial circuit of said State, has certified to me that he is disqualified by law, which causes are entitled as follows, to wit: W. H. Gaines and Maria, his wife, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, by his guardian, vs. Henry M. Rector and Wilson Steadham; same vs. Jno. C. Hale; same vs. James Sumpter; same vs. Harrison D. Flowers; same vs. Richard Pucket; same vs. Patrick Burk; same vs. Lontta T. Hunter; same vs. Edmund Mill; same vs. Jacob W. Parker; same vs. Abram Kempner. He, the said John C. Murray, is therefore hereby authorized to do and perform all and singular the duties incumbent on him as special judge of the circuit court, for the trial and determination of the causes aforesaid, according to law and the trust reposed in him.

In testimony whereof, I hereunto set my hand, and caused the [L. S.] seal of the State of Arkansas to be affixed, at Little Rock, this 15th day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States of America the 80th year.

ELIAS N. CONWAY.

By the Governor:

D. B. GREER, *Secretary of State.*
By RICHARD B. JOHNSON,
Deputy Secretary of State.

Proceedings had on the 29th day of August, 1855:

WM. H. GAINES and WIFE and others
vs.
HENRY M. RECTOR & WILSON STEADHAM. } 4. Ejectment.

Came the parties by attorney, and thereupon came a jury of good and lawful men, to wit: James E. Taylor, James S. Page, Egbert Houpt, Jeremiah J. Hensen, William Harrison, John B. Bland, William D. Whitmire William P. Keesby, Edwin C. Jones, Jacob A. Gentry, William W. Reyburn, Samuel A. Cook, who were duly elected, empanneled, and sworn in this case.

On leave asked and obtained during the trial, the defendants file the affidavit of H. M. Rector, one of the defendants, as follows:

WM. H. GAINES et al.
vs.
HENRY M. RECTOR & WILSON STEADHAM. } 4.

I, Henry M. Rector, do state on oath that the original of the patent certificate issued on the 16th of June, 1838, by F. R. Conway, U. S. recorder of land titles at St. Louis, Missouri, issued on location certificate No. 467, in favor of Francis Langloise, or his legal representatives, for two hundred arpents of land, now here offered to be read in evidence, with the certificates and documents attached, was by me, who was then and has ever since been the owner of said certificate and the land thereby selected, sent and deposited in office of Commissioner of the General Land Office at Washington city, soon after its issuance, for the purpose of procuring the issuance of the patent thereon, where the same is now, and has been there, so far as I know, as a record of that office. At all events, I have applied to the said Commissioner to get said certificate, to be read in suits in respect of the property in controversy, and he has declined to deliver it to affiant, and he is therefore wholly unable to produce the original, or to control the same. The same was and is a genuine document.

H. M. RECTOR.

Sworn to before me, August 29, 1855.
JNO. P. EMERSON, *Clerk.*

GAINES and others
vs.
RECTOR & STEADHAM. } 4.

Affidavit of H. M. Rector, exhibit O, filed Aug. 29, 1855.
JNO. P. EMERSON, *Clerk.*

After hearing part of the testimony, it is ordered that the jurors, together with this case, be respited until to-morrow morning, eight o'clock.

Proceedings had on the 30th day of August, 1855.
Absent, the Hon. T. F. Sorrels, judge.
Present and presiding, the honorable John C. Murray, special judge.

WILLIAM H. GAINES and Wife and others
vs.
RECTOR & STEADHAM. } 4. Ejectment.

Came again the parties by attorney, and came also the jurors who on yesterday were respited until to-day, and the trial was resumed; and the jurors again respited to meet to-morrow morning, eight o'clock.

Proceedings had on the 31st day of August, 1855.

Present and presiding, the Hon. John C. Murray, special judge.

WILLIAM H. GAINES and Wife and others
vs.
RECTOR & STEADHAM. } 4.

Came again the parties by attorney, and came also the jurors who on yesterday was respited until to-day, and the trial is resumed.

Pending the trial, the defendants excepted to seven several decisions of the court, and severally asked and obtained leave to tender their bills of exception during the term.

Said jurors, together with this suit, are respited until to-morrow morning, eight o'clock.

Proceedings had on the 1st day of September, 1855.

Present and presiding, the Hon. John C. Murray, special judge.

WILLIAM H. GAINES and Maria his wife, Albert Belding, Henry Belding, and George Belding,
vs.
HENRY M. RECTOR and Wilson Steadham. } 4. Ejectment.

Came again the parties by attorney, and came also the jurors who on yesterday were respited until to-day, and the trial was resumed, and the residue of the evidence heard by the jury. Pending the trial of this suit, the defendants excepted to two several decisions of the court, and severally ask and obtained leave to tender their bills of exceptions during the term. After hearing the evidence adduced, and the charge of the court, (the counsel of the parties not wishing to argue the case to the jury,) the jury retired to consider of their verdict, and returned into court, and on their oath aforesaid, return endorsed on the declaration their verdict, as follows:

Verdict.

"We, the jury, find for the plaintiffs upon the issue joined herein, and assess their damages to the sum of four thousand seven hundred and twenty-five dollars, (say $4,725.)

JAMES E. TAYLOR, *Foreman.*

Judgment.

Therefore it is by the court considered that said plaintiffs, William H. Gaines and Maria Gaines, his wife, formerly Mariah Beld-

ing, Albert Belding, Henry Belding, and George Belding, do have and recover of and from the said defendants, Henry M. Rector and Wilson Steadham, as well the possession of the premises *canned* and described in their declaration in this behalf, being all that part of a certain tract or parcel of land designated upon the plat of the public survey as the southwest quarter of section thirty-three, (S. W. qr. sec. 33,) in township two south, of range nineteen west, (T. 2 S., R. 19 W.,) which lies north and above the dividing line, heretofore established and observed by one Milas H. Woods and one John C. Hale, between their respective possessions on said quarter-section of land, and including all the houses, buildings, and improvements occupied and used by Warren and Steadman during the summer of the year 1851 as a tavern stand, being all that part of quarter-section of land, and the houses and improvements thereon, situated north or above the premises commonly known as Hale's tavern stand, and also the sum of four thousand seven hundred and twenty-five dollars (say $4,725) for their damages by them sustained in this behalf, and so as aforesaid assessed by the jury, as also all their costs by them expended in and about this prosecution of their suit in this behalf to be taxed, &c., and that the said plaintiffs have execution hereof by writ of possession for said premises, with command also to levy and collect said damages and costs, as provided by law in such cases.

Pending the trial, the defendants excepted to decisions of the court in regard to instructions, and ask and obtained leave to tender their bill of exceptions during the term.

On leave granted, the defendants tender their bill of exceptions herein, which is signed, sealed, and ordered of record herein.

Bill of Exceptions.

ARKANSAS, *sct.*

In the Hot Spring circuit court, August term, A. D. 1855.

WILLIAM H. GAINES and others, plaintiffs, vs. HENRY M. RECTOR and WILSON STIDHAM, defendants. } In ejectment.

Be it remembered that on the trial of this cause, after the jury were sworn, the said defendants admitted that said plaintiffs, except the said Gaines, were the children and sole heirs-at-law of Ludovicus Belding, deceased, and that before the institution of this suit said William H. Gaines intermarried with said Maria, one of said heirs, and that they are still husband and wife.

Whereupon said plaintiffs, to support their action in this behalf, read in evidence to the jury, against the objection of said defend-

ants, the following certificate and documents, which were admitted by defendants to be signed and executed by the persons and officers by whom they purport to be signed and executed, to wit:

Receiver's receipt.

RECEIVER'S OFFICE AT WASHINGTON, ARKANSAS,
No. 6545. *December* 19, 1851.

Received from Maria Gaines, (wife of William H. Gaines, formerly Maria Belding,) Albert Belding, Henry Belding, and Geo. Belding, the heirs and legal representatives of Ludovicus Belding, deceased, of Hot Spring county, in the State of Arkansas, the sum of two hundred dollars for the southwest quarter of section thirty-three, (33,) in township two (2) south, of range nineteen (19) west, containing one hundred and sixty acres, (160,) according to the return of the surveyor general, at $1 25 per acre.

According to instructions, I note that this entry interferes with the New Madrid location of Francis Langlois on the same lands, and also that it embraces lands directed to be reserved by the act of Congress of 20th April, 1832, and is only permitted to be made under the decision of the Secretary of the Interior, under date of November 21, 1851, and the instructions of the Commissioner of the General Land Office, under date of November 25, 1851, in accordance with said decision.

B. F. HEMPSTEAD, *Receiver.*

Register's Transcript.

GENERAL LAND OFFICE,
November 25, 1851.

GENTLEMEN: The papers accompanying your letters of the 18th and 24th March last, in reference to the claim to the hot springs in Arkansas, having been submitted to the Secretary of the Interior for his action on the legal point in the case, to wit: the reservation of the land by Congress, they were returned to this office for its decision, on the respective merits of the pre-emption claims, irrespective of this question.

On the 26th of August last, this office returned the papers, with its decision adverse to the claim of the heirs of John Percifull, and in favor of that of the heirs of Ludovicus Belding, it agreeing with you both as to the establishment of the facts of cultivation in 1829, and possession on the 29th May, 1830, and regarding the objections of the receiver, founded upon the opinion that those acts were performed as the tenant of another, as not affecting the validity of the claim.

On the 14th ult. this office received the opinion and decision of the Secretary of the Interior, dated the 10th of that month, in which he sustains the existing validity of the act of 20th April,

1832, it not having been repealed or affected by any subsequent law, and that therefore none of the claims preferred for this land are of any legality.

On the said 14th ult. an application was made by the attorney of the heirs of Belding for permission to make an entry of said claim, "in order that they may be placed in a proper position for the assertion of their rights hereafter in the courts," stating that of course, under the decision of the Secretary, they should not ask for a patent.

This was refused by this office, and an appeal from that action taken to the Secretary of the Interior, who, on the 21st inst., addressed to this office a letter, a copy of which is herewith enclosed.

In accordance with the direction of the Secretary therein contained, you are instructed to permit the "heirs of Ludovicus Belding" to make payment for the southwest quarter of section 33, township 2 south, range 19 west, as containing 160 acres; and in addition to the ordinary entry thereof upon your books, and the return to this office, you will note the fact of its interference with the New Madrid location of Langloise, of its embracing land directed to be reserved by act of 20th April, 1832, and that said entry is permitted under the Secretary's decision of the 21st November, 1851. Similar annotations will be made on the receiver's receipt and the register's certificate.

Respectfully, your obedient servant,

J. BUTTERFIELD, *Commissioner.*

REGISTER and RECEIVER, *Washington, Arks.*

(Copy.)

DEPARTMENT OF THE INTERIOR,
Washington, Nov. 21, 1851.

SIR: Upon consultation with the Attorney General, and after full consideration of the application of A. H. Lawrence, esq., attorney for the heirs of Ludovicus Belding, one of the claimants to the hot springs of Arkansas, on appeal from your decision of the 15th ultimo against permitting said heirs to make an entry under the acts of 29th May, 1830, and 14th July, 1832, I have concluded that it will be proper and in accordance with precedent to permit them to do so; and you will therefore instruct the register and receiver accordingly. Said entry will remain subject to the same power of revision and control by the General Land Office and this Department as may be lawfully exercised over any ordinary entry. The Government will still hold the ultimate.....of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same lands.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

To the COMMISSIONER *of the General Land Office.*

No. 6,545. LAND OFFICE, WASHINGTON, ARK.,
December 19, 1851.

We, Maria Gaines, (wife of William H. Gaines, late Maria Belding,) Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, of Hot Spring county, Arkansas, do hereby apply to purchase the southwest quarter of section thirty-three, (33,) in township two (2) south, of range nineteen (19) west, containing one hundred and sixty acres, for which we have agreed with the register, acting under instructions from the Commissioner of the General Land Office, bearing date 25th November, 1851, to give at the rate of one dollar and twenty-five cents per acre.

A. BELDING,
MARIA GAINES,
HENRY BELDING,
GEORGE BELDING.

I, William H. Etter, register of the Land Office at Washington, Arkansas, do hereby certify that the tract above mentioned is sold as containing one hundred and sixty acres as mentioned above, and the price agreed upon one dollar and twenty-five cents per acre.

WM. H. ETTER, *Register.*

Note.—In accordance with instructions I note the interference of this entry with the New Madrid location of Langloise, of *it* embracing land directed to be reserved by the act of the 20th April, 1832; and that the entry is permitted to be made under the decision of the Secretary of the Interior of the 21st November, 1851, transmitted to this office by the Commissioner of the General Land Office under date of 25th November, 1851.

WM. H. ETTER, *Register.*

REGISTER'S OFFICE,
Washington, Ark's, January 19, 1852.

I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the foregoing pages contain a true copy of the letters received from the Commissioner of the General Land Office, the application filed, and the annotations on the tract book in this office made under said instructions.

WM. H. ETTER, *Register.*

Whereupon plaintiffs had sworn in their behalf as a witness Augustus D. Hardy, who testified:

Testimony of Hardy.

I am county surveyor of Hot Spring county, Arkansas. I know the property in Hot Spring valley occupied by defendant, Wilson

Stidham, one of defendants, known as Rector's hotel, and out buildings, bath houses, &c. The buildings and premises lie in the valley immediately adjoining and north of Hale's premises and tavern. The stables, garden, and out houses lie outside of the southwest quarter of section thirty-three, in township two south, in range twelve west; the whole of which lies in Hot Spring county. The main buildings and dwellings are on said quarter section. Said Stidham and one Warren have occupied said premises since 1851, I think. I think there are some 30 rooms in the houses so occuby said Stidham & Warren on said quarter section; would have rented one year with another, from first January, A. D. 1851, until the present time for $2,500 per year. To all evidence in regard to rents said defendants objected at the time.

Cross-examined.—I never saw any official survey or plat of the north and south line between section thirty-two and thirty-three in the township and range aforesaid. I have traced the northern line of the southwest quarter of section thirty-three aforesaid, and it runs about 20 or 30 yards from the northern end of a long row of small rooms, running from Stidham & Warren's tavern stand, at a northern direction, and ran through some old houses since removed, &c. These premises, occupied by said Stidham & Warren, within said quarter section of land, were mine; I think I could rent it for $2,000 per year if the houses were destitute of furniture. I have my opinion as to the rent upon what it is said Stidham & Warren pay Rector for the premises, which is said to be $2,500 per year. I never saw any marks on the trees except where the north and south line between sections thirty-two and thirty-three aforesaid strikes the exterior lines of the New Madrid survey. There was no quarter section corner on said line within the New Madrid survey, at least I never saw any such corner marked as usual elsewhere. I have seen the said section line between sec. 32 and 33 and I know where it would run, and from this I speak confidently as to where the northern line of said southwest quarter of section 33 would run. I never surveyed the fractions around the New Madrid survey, though I have seen them on plats which I supposed to be genuine. Stidham & Warren are within the New Madrid survey.

The improvements made on the premises occupied by Stidham & Warren before the institution of this suit were worth about $2,500.

The long row of buildings and dining room were built before suit; 2 story house east of street was built in 1853; 1 one-story house was built before suit; 2 one-story houses were built since, or rather were there before, but were moved from where they originally stood and put up again.

Re-examined.—I am county surveyor, and have run the line between sec. 32 and 33, and know where the corners between those sections on the exterior northern and southern lines of the sections are; I ran them at Gaines' request; my survey was a private survey, and not by order of any court or surveyor.

Lawson Runyon being sworn for plaintiffs, testified:

Wilson Stidham and Charles R. Warren, from first of 1851, had the possession of the houses and improvements north of John C. Hale's premises and adjoining immediately and up to the northern line of the S. W. ¼ of sec. 33, until about 1854, and since then said Stidham has had possession above the line between Hale and Stidham and Warren, and after *after* Stidham was the same line observed between Hale and Woods. I carried chain for Hardy when he ran line of quarter section. The improvements on Stidham & Warren's possessions prior to 1851 were worth some $1,200 or $1,500. The improvements made since the institution of the suit were and are worth about $1,500. The rent of the premises in 1851, 1852 was worth about $1,500; in 1854, 1855 rent was worth about $2,000.

Cross-examined.—The premises would not rent for scarcely anything without the improvements. The older improvements were made by Woods and Mitchell; some by Reyburn 20 years ago. In 1840 Woods and Hale improved. Improvements made before December, 1851, were worth some $2,000 to $2,500. Improvements made since are worth about $2,500. They are substantial improvements, adding value to the lands. Reyburn and Conway claimed under Percifull, who set up a pre-emption right to the springs. Hale and Woods held under same claim. After John Percifull's death his heir-at-law and widow have since continuously insisted on and prosecuted said pre-emption claim ever since 1834; and Rector and those claiming under him came in under Percifull. The exterior corners of sections 32 and 33 were marked as public surveys; there was a mark on trees on the north and south line between sections 32 and 33, which I supposed was a half-mile corner, but whether it was an official corner or not I do not know. The plats in surveyor general's office and in register's office in Washington showed the New Madrid claim laid off regardless of the public surveys, and the public surveys closed on the New Madrid survey. I have seen the quarter-section corner marked on trees, and Hale, who surveyed the land for U. S., told me where the corner was. Here plaintiffs here closed.

Whereupon defendants offered to read and give in evidence to the jury the following certificates and documents, with the certificates thereto attached, to wit:

No. 435. OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, Missouri, June 16th, 1838.

I certify that in pursuance of the act of Congress passed the 17th day of February, 1815, a location certificate, No. 467, issued from this office in favor of Francis Langloise or his legal representatives for two hundred arpents of land; that a location has been made, as appears by the plat of survey herewith, and that the said Francis Langlois or his legal representatives is entitled to a patent for

Stidham, one of defendants, known as Rector's hotel, and out buildings, bath houses, &c. The buildings and premises lie in the valley immediately adjoining and north of Hale's premises and tavern. The stables, garden, and out houses lie outside of the southwest quarter of section thirty-three, in township two south, in range twelve west; the whole of which lies in Hot Spring county. The main buildings and dwellings are on said quarter section. Said Stidham and one Warren have occupied said premises since 1851, I think. I think there are some 30 rooms in the houses so occuby said Stidham & Warren on said quarter section; would have rented one year with another, from first January, A. D. 1851, until the present time for $2,500 per year. To all evidence in regard to rents said defendants objected at the time.

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Re-examined.—I am county surveyor, and have run the line between sec. 32 and 33, and know where the corners between those sections on the exterior northern and southern lines of the sections are; I ran them at Gaines' request; my survey was a private survey, and not by order of any court or surveyor.

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Cross-examined.—The premises would not rent for scarcely anything without the improvements. The older improvements were made by Woods and Mitchell; some by Reyburn 20 years ago. In 1840 Woods and Hale improved. Improvements made before December, 1851, were worth some $2,000 to $2,500. Improvements made since are worth about $2,500. They are substantial improvements, adding value to the lands. Reyburn and Conway claimed under Percifull, who set up a pre-emption right to the springs. Hale and Woods held under same claim. After John Percifull's death his heir-at-law and widow have since continuously insisted on and prosecuted said pre-emption claim ever since 1834; and Rector and those claiming under him came in under Percifull. The exterior corners of sections 32 and 33 were marked as public surveys; there was a mark on trees on the north and south line between sections 32 and 33, which I supposed was a half-mile corner, but whether it was an official corner or not I do not know. The plats in surveyor general's office and in register's office in Washington showed the New Madrid claim laid off regardless of the public surveys, and the public surveys closed on the New Madrid survey. I have seen the quarter-section corner marked on trees, and Hale, who surveyed the land for U. S., told me where the corner was. Here plaintiffs here closed.

Whereupon defendants offered to read and give in evidence to the jury the following certificates and documents, with the certificates thereto attached, to wit:

No. 435. OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, Missouri, June 16th, 1838.

I certify that in pursuance of the act of Congress passed the 17th day of February, 1815, a location certificate, No. 467, issued from this office in favor of Francis Langloise or his legal representatives for two hundred arpents of land; that a location has been made, as appears by the plat of survey herewith, and that the said Francis Langlois or his legal representatives is entitled to a patent for

the said tract, containing according to said location one hundred and seventy acres and fifteen-hundredths of an acre, situated in the State of Arkansas, the township and range not mentioned.

Survey No. 2903.

F. R. CONWAY,
U. S. Recorder of L. Titles in the State of Missouri.

TO THE COMMISSIONER OF THE GENERAL LAND OFFICE,
City of Washington.

Gen'l William Rector, surveyor, &c., of the public lands for the State of Illinois and Territory of Missouri.

The undersigned applies for the entry or donation of two hundred arpens of land to satisfy a certificate issued by Frederic Bates, esq., recorder of land titles for the Territory of Missouri, to Francis Langlois or his legal representatives, dated the 26th November, 1818, and numbered 467; to be surveyed in a square tract, the lines of which to be corresponding with the cardinal points and to include to the Hot Springs (so called) upon the waters of the Ouachita river, south of the river Arkansas, the said springs to be as near the center of the square as circumstances will admit; an order of survey is solicited and directions agreeably to this notice; the springs so to be included are those generally known as the largest and most resorted to upon that river.

S. HAMMOND,
ELIAS RECTOR.

St. Louis, 27th January, 1819.

[For plat, see original, page 25.]

Certificate No. 467. (Var. 8° 45′ east.) Survey No. 2903.

Surveyed for Francis Langlois or his legal representatives who claims location by virtue of certificate No. 467, issued by Frederic Bates, recorder of land titles, on the 26th November, 1818, two hundred arpens, equal to one hundred and seventy and fifteen-hundredth acres of land, beginning at the main Hot Spring of Arkansas, thence S. 45° E. on an unmarked line 29.17 chains, where set a post, the southeast corner of said survey, from which a pine 24 inc. dia. bears N. 7° E. 40 lks., and a pine, 16 incs. dia., bears N. 67° W. 53 lks., each marked P. S. and B. T., thence north (with line of survey) at 204 links a white oak, 13 ins. dia.; at 41.25 chs. set a post, the northeast corner of said survey, from which a pine, 16 ins. dia., bears N. 45° E. 15 links, and a black oak, 8 ins. dia., bears S. 68° W. 15 links, each marked P. S. and B. T.; thence west at 355 links a white oak, 24 ins. dia., at 41.25 chs. set a post, the northwest corner of said survey, from which a white oak, 16 ins.

dia., bears N. 10° E. 48 links, and a white oak, 18 ins. dia., bears S. 58° E. 56 links, each marked P. S. and B. T.; thence south at 60 links a white oak at 12.10 chs. Hot Spring creek bears east; at 41.25 chs. set a post, the southwest corner of said survey, from which a black oak, 6 ins. dia., bears N. 48° E. 21 links; and a black oak, 10 ins. dia., bears N. 28° W. 50 links; thence east at 563 links a black oak, 12 ins. dia., at 18.87 chs.; Hot Spring creek bears south at 41. 25 chs., the southeast corner of said survey. In conformity with instructions from the surveyor general I have surveyed the foregoing location or claim in the name of Francis Langlois, so that the main Hot spring is the center thereof.

JOHN C. HALE, *D. S.*

28th February, 1838.

SURVEYOR'S OFFICE,
Little Rock, 23d April, 1838.

The foregoing writing is a true copy of the location plat and survey of two hundred arpens of land by virtue of certificate No. 467 on file in this office, the survey of which has been examined and approved.

EDW. CROSS,
Sur. Pub. Lands.

To FREDERIC R. CONWAY,
U. S. Recorder of Land Titles, St. Louis, Missouri.

RECORDER'S OFFICE,
Saint Louis, Missouri, 16th June, 1838.

The foregoing is truly recorded on pages 42 and 43 of book G of record in this office. The number of survey was obtained by me from the surveyor's office at St. Louis and inserted.

F. R. CONWAY,
U. S. Recorder of land titles in the State of Missouri.

General Land Office.

I, James Shields, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1, 2, 3, and 4, are true copies of the papers on file in this office.

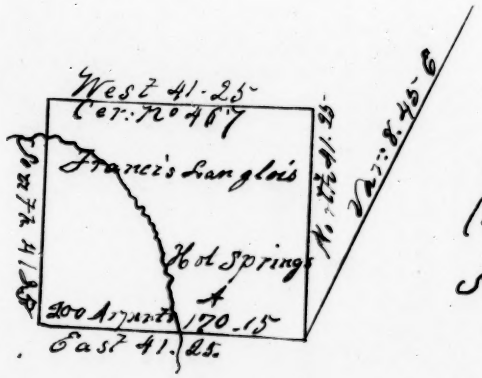
In testimony whereof, I have hereunto subscribed my name, and caused the seal of the said office to be affixed at the city of Washington, the second day of July, 1845.

[SEAL OF GEN'L L. OF. J. S.]

JAS. SHIELDS, *Commissioner.*

And at the same time the said Rector filed his affidavit herein, now of file, marked exhibit O, filed 29th August, 1855, and made part hereof, as an excuse for the non-production of the original:

No 146 - page 25
15 " 18



Certificate No 467
(Var 8° 45' east)
Survey No 2903

WM. H. GAINES et al.
vs.
HENRY M. RECTOR & WILSON STIDHAM.

I, Henry M. Rector, do state on oath that the original of the patent certificate issued on the 16th June, 1838, by F. R. Conway, U. S. recorder of land titles at St. Louis, Missouri, issued on location certificate No. 467 in favor of Francis Langloise or his legal representative for two hundred arpents of land, now here offered to be read in evidence, with the certificates and documents attached, was by me, who was then and has ever since been the owner of said certificate and the land thereby selected, sent and deposited in the office of the Commissioner of the General Land Office, at Washington city, soon after its issuance, for the purpose of procuring the issuance of the patent thereon. The same is now and has been treated, so far as I know, as a record of that office; at all events, I have applied to the said Commissioner to get said certificate to be used in suits in respect of the property in controversy, and he has declined to deliver it to affiant, and he is therefore wholly unable to produce the original.

The same was and is a genuine document.

H. M. RECTOR.

Sworn to before me, Aug. 29th, 1855.

JNO. P. EMERSON, *Clerk.*

But said plaintiffs objected to the introduction of said certificate and accompanying documents as evidence upon the merits only; and upon consideration of said certificate and certificates and documents, the court refused to admit the same in evidence at all upon the merits, and because the same was no evidence of title in the party to whom the same was granted, and so excluded the same.

To all which proceedings in excluding said evidence defendants excepted at the time, and had time until now to prepare and file their exceptions in respect thereof.

And thereupon said defendants offered to read in evidence the proceedings and decree on the chancery side of this court, in the cause wherein Henry M. Rector was complainant, and Francis Langlois and others were defendants; which proceedings and decree are made part hereof, and are to be copied and herein inserted, together with the record of said decree, in the recorder's office of said county, purporting to vest in said Rector the title of said Langlois and others in said New Madrid grant and land.

To the honorable the judge of the circuit court of the county of Hot Spring in chancery sitting:

This bill of complaint of your orator, Henry M. Rector, now exhibited against Francis Langlois, Joseph Story, Samuel Hammond,

Eliza A. Hammond, wife of the said Samuel, or their unknown heirs, if they be deceased, all unknown to your orator, and non-residents of this the State of Arkansas, showeth unto your honor that on or about the 20th day of November, eighteen hundred and eighteen, one Frederick Bates, recorder of land titles for the territory of Missouri, by virtue of the act of Congress passed the 17th day of February, eighteen hundred and fifteen, for the relief of the inhabitants of the "late county of New Madrid, in the Missouri territory," issued to Francis Langlois aforesaid one location certificate, commonly called a "New Madrid certificate," giving the right to the said Francis or his legal representatives to locate or enter by virtue thereof, with the principal deputy surveyor for the territory of Missouri, two hundred arpents of land on any of the public lands of said territory the sale of which is authorized by law. And that on the tenth day of November, A. D. eighteen hundred and eighteen, the said Francis Langlois aforesaid, by his writing obligatory—signed with his hand, and also having affixed thereto his private seal—did, on the day just aforesaid, make, constitute, and appoint as his true and lawful attorney in fact, with power of substitution, one Joseph Story, of the territory of Missouri, the said Joseph being he who is just referred to, and made defendant in this bill; by virtue of which power said Joseph was fully empowered to dispose of, sell, or locate said New Madrid certificate aforesaid, a copy of which said power of attorney is hereto appended and made part of this bill, and marked as exhibit A; the original by time or accident being mislaid or lost, and is not now in the power or possession of your orator, but is of record in your honorable court, and may be held for the inspection of your honor at any time, if required.

Your orator would further represent, that on the 24th day of February, eighteen hundred and twenty, the aforesaid Joseph Story, as said attorney in fact aforesaid of said Francis Langlois, entered into an agreement of bargain and sale with Samuel Hammond and Elias Rector, both of then territory of Missouri, by which he conveyed to the parties last aforesaid all the right, title, interest, and estate that he himself had in his own proper right as the assignee of the said Francis Langlois aforesaid in the location certificate aforesaid issued by Frederic Bates, recorder, &c., to said Francis Langlois, or his legal representatives, for two hundred arpents, to be located as aforesaid; whereby said Joseph covenanted with said Samuel Hammond and Elias Rector, and with their heirs and assigns forever, that he would forever warrant and defend the title to the aforesaid certificate against the claim or claims of all and every person or persons whatsoever; a copy of which agreement and deed of bargain and sale is herewith exhibited and marked B, the original of which copy is also a transcript from the record of the county of Hot Spring, properly certified and sealed, &c., by the keeper of the record of said county, and will be filed for the inspection of the

court, if necessary, being now in the possession of your orator, &c.

And your orator would further most respectfully represent, that by indenture made the 13th day of February, in the year of our Lord one thousand eight hundred and nineteen, by Samuel Hammond aforesaid and his wife, Eliza A. Hammond, they (said Samuel and Eliza) conveyed to Elias Rector aforesaid (all of the territory of Missouri) the one undivided moiety of all their right, title, and interest in and to the New Madrid certificate aforesaid, together with the undivided half of all and of the lands that had then been or might hereafter be located by virtue thereof, which conveyance was made for and in consideration of the sum of six hundred dollars in hand paid by the said Elias to the said Samuel, with a covenant to forever warrant and defend to the said Elias and his heirs and assigns the title or right to the location certificate aforesaid against the claim or claims of any person or persons whatsoever; a true and perfect copy of said indenture as exhibited by the records of Hot Spring county is herewith exhibited and marked C, the original being mislaid and out of the power and procurement of your orator.

And your orator would further most respectfully represent, that under the authority of the act of Congress aforesaid, and as the assignees of said Francis Langlois, the said Samuel Hammond and Elias Rector, on the 27th day of January, eighteen hundred and seventeen, by application and notice addressed to Gen'l Wm. Rector, surveyor gen'l, &c., for the State of Ills. and territory of Missouri, located the New Madrid certificate aforesaid, the exterior lines of which location to run to the cardinal points, and to be surveyed in a square tract, so as to include the hot springs upon the waters of the Washita, now situate in Hot Spring county aforesaid, State of Arkansas. That in accordance with the above notice of location, the boundary lines of the survey were marked and measured, and the corners thereof established on the 16th day of July, A. D. 1820, by one James S. Conway, deputy surveyor under said Gen'l William Rector aforesaid; a copy of which survey, with field notes and plats, are hereto appended, and prayed to be taken as part of this your orator's bill, and marked E. The original being made and returned to the office of the surveyor gen'l aforesaid in duplicates, is at all times ready for the inspection of the court, if the same should be desired.

Your orator would further most respectfully represent, that on or about the 28th day of February, (1838,) eighteen hundred and thirty-eight, one John C. Hale, deputy surveyor, by order of then surveyor general, Ewd. Cross, made at the request of your orator a resurvey of said New Madrid location aforesaid, and returned his plats and field notes therefrom to the office of the surveyor, Cross. That said Cross, as the law directs, made out and transmitted to the recorder of land titles for the territory of Missouri, who was then in the person of Frederic R. Conway, whose office

was kept at St. Louis, a correct transcript of the notice or location made by Hammond and Rector, and the field survey and plat returned by John C. Hale, deputy, &c. Whereupon said F. R. Conway as such recorder, and as the law directs, issued to your orator, as the legal representative of Francis Langlois and those claiming under him, what is *decommonly* denominated a patent certificate, which certificate, location plat of survey, &c., was transmitted to the Commissioner of the Gen'l Land Office, that the patent might (as the law provides) issue therein; but in consequence of intervening obstacles hatched up *up* in corruption and fraud by the Gen'l Land Office, said patent, although often promised, has up to this moment been unjustly withheld and denied to your orator; a copy of all which latter papers, including the location plat and survey made by deputy Hale, and patent certificate issued by Conway aforesaid as recorder aforesaid is hereto appended and marked D, the original of each being on file in the *in the* General Land Office at Washington city, from whence your orator procured them, with the United States seal attached, and shall be at all times held subject to the inspection or order of the court.

And further, your orator most respectfully begs leave to represent, that by the last will and testament of the aforesaid Elias Rector, who departed this life at St. Louis, aforesaid, in the summer of the year eighteen hundred and twenty-two, the whole of said Elias's estate, real, personal, and mixed, was bequeathed for her natural life to his surviving wife, Frances B. Rector, since Frances B. Trigg, with remainder to his three children, two of whom, Wm. and Sydney Ann Rector, then of tender years, and without heirs, deceased on or about the month of December, in the year (1823) eighteen hundred and twenty-three, or eighteen hundred and twenty-four; that since that time and recently, to wit, on the 23d day of April of the present year eighteen hundred and fifty-two, the said Frances B. Trigg departed this life; that therefore, by the and provisions of said will aforesaid of said Elias Rector, your orator, being the survivor of three children, they having deceased without issue, is the only and sole heir and representative of the said Elias, and succeeds to the whole of his remaining estate.

Wherefore your orator having shown from the facts and papers above and in this bill referred to that his father, Elias Rector, being the sole owner of the New Madrid certificate aforesaid, and the lands located thereby, he would pray of your honor that a title be decreed him against all of the parties made defendants in this bill of complaint, all of them unknown to your orator, and non-residents of this State; and not being apprized of the death of original parties, to wit, Francis Langlois, Joseph Story, and Samuel Hammond and Eliza A., his wife, your orator would ask that his title be established both as to said Langlois, Story, and Hammond, and their heirs, if any there be; and that they each and all of them be re-

quired to come forward and make title, or that *is* case of their default, this your orator's bill be taken as confessed, and the proper orders be suggested to establish in your orator as full and complete title as against all of said defendants to said land so located, by virtue of the aforesaid certificate survey, patent certificate, &c., &c.

Wherefore, as in duty bound, your orator would ever pray, &c., &c.

HENRY M. RECTOR,
By RECTOR & TRIGG,
Solicitors.

A.

Know all men by these presents, that I, Francis Langlois, of the county of New Madrid, and Missouri territory, for good cause and considerations me thereunto moving, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint Joseph Story, of the county and territory aforesaid, my true and lawful agents and attorney in fact *invocable*, for the purposes following, to wit: Whereas the liberality, justice, and wisdom of the Congress of the United States, by an act approved the 17th day of February, 1815, entitled an act for the relief of the inhabitants of the late county of New Madrid, in the Missouri territory, who suffered by earthquakes, provides that those whose lands have been materially injured by earthquakes shall be authorized to locate the like or a greater quantity on any of the public lands of the said territory the sale of which is authorized by law, and being one of those who are entitled to any of the provisions of the said act: Now know ye, that I, Francis Langlois, have given and hereby do give full power and authority to my said attorney to locate on any of the aforesaid public lands in the said territory any quantity of land which I may [be] entitled to by virtue of the aforesaid act for his own proper use, benefit, and behoof, and that of his heirs and assigns forever, and to sell and convey and transfer the same absolutely to any person or persons whatsoever for such pay and consideration which he may think fit also *also*, with power and authority to my said attorney to sell and convey unto the U. S., or any officer under the government who receive the same, my injured land, being and lying situate in the county of New Madrid, in Missouri territory, containing two hundred arpents, it being a part of land confirmed by the late board of commissioners of land claims for the aforesaid territory to Francis Langlois or Mary O. St. John, deed generally in the premises—to do and execute and perform all and whatsoever shall be requisite and necessary in as full a manner as I myself might or could do were I personally present; also with power of substitution; hereby ratifying all and whatsoever my said attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I hereunto set my hand and seal this tenth day of November, anno Domini 1818.

his
FRANCIS ⋉ LANGLOIS. [SEAL.]
mark.

Signed, sealed, and delivered
in the presence of—
RICHARD J. WATERS,
THOMAS Y. HORSLEY.

TERRITORY OF MISSOURI,
County of New Madrid, sc.

I, Richard Tessums, clerk of the southern circuit court within and for the county of New Madrid, do hereby certify that Thomas Y. Horsley, one of the subscribing witnesses to the within instrument of writing, this day personally came and appeared before me and made oath, according to law, that [he] was present and saw the within named and signed Francis Langlois sign, seal, and deliver, and heard him acknowledge the within and foregoing instrument of writing as his act and deed, hand and seal, for the uses and purposes therein expressed, and that Richard J. Waters, the other subscribing witness signed the same with himself, and in *in* the presence of each other.

In testimony whereof, there being no judicial seal yet procured to said county, I hereunto subscribe my name and affix my own private seal this November 13th, in the year 1818.

RICHARD TESSUMS, [SEAL.]
Clerk.

Filed in my office for record this 11th day of June, 1838.
IRA A. SABIN, *Clerk.*

STATE OF ARKANSAS,
County of Hot Spring, sct.

I, Ira A. Sabin, clerk of the circuit court and ex officio recorder, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 11th day of June, A. D. 1838, and the same is now duly recorded. Record Book A, page 118 and 119.

In testimony whereof, I have hereunto set my hand and affixed the seal of office this 14th day of June, A. D. 1838, and of our independence the sixty-second year.

IRA A. SABIN, *Clerk.*

STATE OF ARKANSAS,
County of Hot Spring.

I, Lawson Runyon, clerk of the circuit court and ex officio re-

corder within and for the county aforesaid, do hereby certify that the annexed and foregoing is a true and perfect copy from the record book of deeds and mortgages, book A, pages 118 and 119, as appears of record in said office.

In testimony whereof, I have hereunto set my hand, and caused the seal of said office to be affixed, at Hot Springs, this 11th day of January, A. D. 1841.

LAWSON RUNYON, *Clerk.*

B.

This agreement made and entered into the twenty-fourth day of February, one thousand eight hundred and twenty-one, by and between Joseph Story, of one part, and Samuel Hammond and Elias Rector, of the other part, witnesseth, That the said Joseph Story, for and in consideration of the sum of one dollar to him in hand paid by the said Hammond and Rector, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents grant, bargain, and sell and convey to the said Samuel Hammond and Elias Rector his right, title, and interest in certificate number four hundred and sixty-seven, (467,) issued by Frederic Bates, recorder of land titles for the territory of Missouri, to Francis Langlois or his legal representatives, dated St. Louis, 26th November, 1818, for two hundred arpents, and deeded from said Langlois to said Story, which deed is recorded at New Madrid, to have and to hold to the said Samuel Hammond and Elias Rector, their heirs or assigns, forever; and the said Joseph Story for himself, his heirs and assigns, covenants to and with the said Hammond and Rector, their heirs and assigns, that he will warrant and forever defend to them, their heirs and assigns, the said certificate against the claim or claims of any person or persons whatsoever.

In witness whereof, the said Joseph Story has hereunto set his hand and seal the day and year above written.

JOSEPH STORY, [SEAL.]

Signed, sealed, and delivered in presence of—("fourth" wrote on erasure before signing)—

J. V. GARNIER.

STATE OF MISSOURI, *ss.*

Be it remembered that on the day of the date hereof, before the undersigned, a notary public of the county of St. Louis, in the territory aforesaid, duly commissioned, residing in the town of St. Louis, personally appeared Joseph Story, who acknowledged the within instrument of writing to be his act and deed for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, at St. Louis aforesaid, this 24th day of February, A. D. 1821.

[L. S.]

J. V. GARNIER, *N. P.*

TERRITORY OF ARKANSAS,
County of Clark.

Be it remembered that on the 22d day of July, A. D. 1821, the within deed or instrument of writing and certificate was received in the office of the clerk of the court of common pleas for the county aforesaid and ex officio recorder, and duly recorded in book A, pages 62 and 63.

HENRY S BISCOE,
Clerk and ex officio Recorder.

STATE OF ARKANSAS,
County of Hot Spring, ss:

I, Ira A. Sabin, clerk of the circuit court and ex officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 12th day of March, A. D. 1838, and the same is now duly recorded in record book A, page 96, 97, 98.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at Hot Springs, the 12th day of March, in the year of our Lord one thousand eight hundred and thirty-eight.

[SEAL.]

IRA A. SABIN,
Clerk and ex officio Recorder.

LOUISVILLE, 6*th June*, 1838.

We hereby certify that the within and foregoing agreement of bargain and sale from Joseph Story to Samuel Hammond and Elias Rector, together with the three official certificates thereon attached, and the endorsements and minutes made thereon by the clerk, are truly copied from the document purporting to be the original, and that we have carefully examined and compared the same. Given under our hands the date above.

THOS. JOYES,
G. W. BARCLEY,
R. V. SCOTT.

C.

This indenture, made this 19th day of February, in the year of of our Lord one thousand eight hundred and nineteen, by and between Samuel Hammond and his wife, Eliza A. Hammond, of the one part, and Elias Rector, of the other part, all of the town of

St. Louis and Territory of Missouri, witnesseth: That whereas the said Samuel Hammond purchased of Joseph Story, as the attorney in fact of Francis Langlois, a certificate for two hundred arpents of land, commonly called a New Madrid certificate, said certificate being dated twenty-sixth of November, eighteen hundred and eighteen, and number four hundred and sixty-seven, said deed of said Francis Langlois by the said Joseph Story, as the attorney in fact of the said Francis, bearing date 4th day of January, eighteen hundred and nineteen, which said New Madrid certificate has been located by the said Samuel Hammond, on the Hot Springs on the Washitaw, in the county of Arkansas, in the said Territory: Now the said Samuel and Eliza A., his wife, for and in consideration of the sum of six hundred dollars by the said Elias to the said Samuel in hand paid, the receipt whereof is hereby acknowledged, at and before the ensealing and delivery of these presents, have granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, convey, and confirm unto the said Elias Rector one undivided moiety of the said New Madrid certificate, the rights and interests accruing or arising from the same, and also the one undivided moiety of the said lands located as aforesaid, in virtue of said certificate, on the Hot Springs, in the county of Arkansas, or if the said location should be removed by the parties hereto, the one undivided moiety of such lands as may be hereafter located in virtue of said certificate by the said parties hereto:

To have and to hold unto the said Elias Rector, his heirs and assigns, forever, the above sold, one undivided moiety and interest in the said New Madrid certificate, and the said undivided moiety of the said land as aforesaid located in virtue thereof, or which may hereafter be located in virtue thereof, in the event of the removal of the same by the parties hereto.

And the said Samuel, for himself, his heirs, executors, and administrators, doth by these presents covenant to and with the said Elias Rector, his heirs and assigns, forever, that in the said Samuel and Eliza A., his wife, have the true and only legal and equitable title to the said certificate, or the interest and property in the same.

In testimony whereof we, the said Samuel Hammond and Eliza A. Hammond, his wife, have hereunto set our hands and seals the day and date just above written, with the words "in virtue of said certificate" interlined.

SAMUEL HAMMOND, [SEAL.]
ELIZA A. HAMMOND, [SEAL]

Signed, sealed and delivered in the presence of—
JAS. H. PECK,
GARRET ANDERSON.

TERRITORY OF MISSOURI,
County of St. Louis, sct.

This day personally appeared before me the deputy clerk of the

circuit court within and for the county of St. Louis, the within-named Samuel Hammond and Eliza, his wife, and severally acknowled the within deed or instrument in writing to be their and each of their bonds and seals, acts and deeds, for the purposes therein mentioned; and the said Eliza Hammond, wife of the said Samuel, being by me made acquainted with the contents of said deed, and examined separately and apart from her husband, acknowledged that she signed the same freely and voluntarily, and without the compulsion or undue influence of her said husband.

Given under my hand and the seal of office this 2d day of March, in the year of our Lord one thousand eight hundred and nineteen, and of our independence the forty-fourth.

JOHN C. LONG, *D. C'k.*,
For ARCHIBALD GAMBLE,
Clerk.

TERRITORY OF MISSOURI, *set.*

Be it known that on the day of the date hereof, before Joseph V. Garnier, a notary public of the Territory aforesaid, duly commissioned, residing in the town of St. Louis, personally appeared Samuel Hammond and Eliza A. Hammond, his wife, who acknowledged the within deed or instrument of writing to be their act and deed for the purposes therein mentioned.

And the said Eliza A. Hammond, the wife of the said Samuel, being by me examined separately and apart from her said husband, doth make her free and voluntary acknowledgment that she is well acquainted with the contents of the said deed, and hath executed the same free from the compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at St. Louis aforesaid, this 18th day of March, in the year 1820. [L. S.]

J. W. GARNIER, *N. P.*

TERRITORY OF ARKANSAS,
County of Clark, ss.

Be it remembered, that on this nineteenth day of May, A. D. 1820, the within deed was filed for record, and is duly recorded in book A, folio 47, 48, 49, 50.

Given under my hand and private seal, there being no public seal, at office, the day and year above written. [SEAL.]

DAVID McCORMICK,
Deputy Clerk.
For WM. P. S. BLAIR,
C. C. C. C. C.

STATE OF ARKANSAS,
County of Hot Spring, ss:

I, Ira A. Sabin, clerk of the circuit court and ex officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 12th day of March, A. D. 1838, and the same is now duly recorded in record book A, page 99, 100.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, at Hot Springs, the 12th day of March, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-second year. [SEAL.]

IRA A. SABIN,
Clerk and ex officio Recorder.

Filed for record in my office this 12th day of March, 1838.
IRA A. SABIN,
Clerk and ex officio Recorder.

LOUISVILLE, *6th June*, 1838.

We hereby certify that the within deed from S. Hammond and Eliza A. Hammond to Elias Rector, and the four official certificates with seals, together with the endorsements and minutes made thereon by the clerk, are truly copied from a deed purporting to be the original, and that we have carefully examined and compared the same.

Given under our hands the date above.

THOS. JOYES,
G. W. BARCLAY.
R. V. SCOTT.

D.

No. 435. OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, Missouri, June 16th, 1838.

I certify that in pursuance of the act of Congress passed the 17th day of February, 1815, a location certificate, No. 467, issued from this office in favor of Francis Langloise or his legal representatives for two hundred arpents of land; that a location has been made, as appears by the plat of survey herewith, and that the said Francis Langlois or his legal representatives is entitled to a patent for the said tract, containing according to said location one hundred and seventy acres and fifteen-hundredths of an acre, situated in the State of Arkansas, the township and range not mentioned.

Survey No. 2903.

F. R. CONWAY,
U. S. Recorder of L. Titles in the State of Missouri.

TO THE COMMISSIONER OF THE GENERAL LAND OFFICE,
City of Washington.

No 196 ha 45
45 - 81

618

Gen'l William Rector, surveyor, &c., of the public lands for the State of Illinois and Territory of Missouri.

The undersigned applies for the entry or donation of two hundred arpens of land to satisfy a certificate issued by Frederic Bates, esq., recorder of land titles for the Territory of Missouri, to Francis Langlois or his legal representatives, dated the 26th November, 1818, and numbered 467; to be surveyed in a square tract, the lines of which to be corresponding with the cardinal points and to include the Hot Springs (so called) upon the waters of the Ouachita river, south of the river Arkansas, the said springs to be as near the center of the square as circumstances will admit; an order of survey is solicited and directions agreeably to this notice; the springs so to be included are those generally known as the largest and most resorted to upon that river.

S. HAMMOND,
ELIAS RECTOR.

St. Louis, 27th January, 1819.

[For plat, see original, page 45.]

Certificate No. 467. (Var. 8° 45′ east.) Survey No. 2903.

Surveyed for Francis Langlois or his legal representatives who claims location by virtue of certificate No. 467, issued by Frederic Bates, recorder of land titles, on the 26th November, 1818, two hundred arpens, equal to one hundred and seventy and fifteen-hundredth acres of land, beginning at the main Hot Spring of Arkansas, thence S. 45° E. on an unmarked line 29.17 chains, where set a post, the southeast corner of said survey, from which a pine 24 inc. dia. bears N. 7° E. 40 lks., and a pine, 16 incs. dia., bears N. 67° W. 53 lks., each marked P. S. and B. T., thence north, with the line of the survey, at 204 links a white, 13 ins. dia.; at 41.25 chs. set a post, the northeast corner of said survey, from which a pine, 16 ins. dia., bears N. 42° E. 15 links, and a black oak, 8 ins. dia., bears S. 68° W. 15 links, each marked P. S. and B. T.; thence west at 355 links a white oak, 24 ins. dia., at 41.25 chs. set a post, the northwest corner of said survey, from which a white oak, 16 ins. dia., bears N. 10° E. 48 links, and a white oak, 18 ins. dia., bears S. 58° E. 56 links, each marked P. S. and B. T.; thence south at 60 links a white oak at 12.10 chs. Hot Spring creek bears east; at 41.25 chs. set a post, the southwest corner of said survey, from which a black oak, 6 ins. dia., bears N. 48° E. 21 links; and a black oak, 10 ins. dia., bears N. 28° 20 links; thence east at 563 links a black oak, 12 ins. dia., at 18.87 chs.; Hot Spring creek bears south at 41. 25 chs., the southeast corner of said survey. In conformity with instructions from the surveyor general I

have surveyed the foregoing location or claim in the name of Francis Langlois, so that the main Hot spring is the center thereof.

JOHN C. HALE, *D. S.*

28th February, 1838.

SURVEYOR'S OFFICE,
Little Rock, 23d April, 1838.

The foregoing writing is a true copy of the location plat and survey of two hundred arpens of land by virtue of certificate No. 467 on file in this office, the survey of which has been examined and approved.

EDW. CROSS,
Sur. Pub. Lands.

To F. R. CONWAY,
U. S. Recorder of Land Titles, St. Louis, Missouri.

RECORDER'S OFFICE,
Saint Louis, Mo., 16th June, 1838.

The foregoing is truly recorded on pages 42 and 43 of book G of record in this office. The number of survey was obtained by me from the surveyor's office at St. Louis and inserted.

F. R. CONWAY,
U. S. Recorder of land titles in the State of Missouri.

I, James Shields, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1, 2, 3, and 4, are true copies of the papers on file in this office.

In testimony whereof, I have hereunto subscribed my name, [SEAL.] and caused the seal of the said office to be affixed, at the city of Washington, the 2d day of July, 1845.

JAS. SHIELDS, *Commissioner.*

[For plat, see original, page 47.]

E.

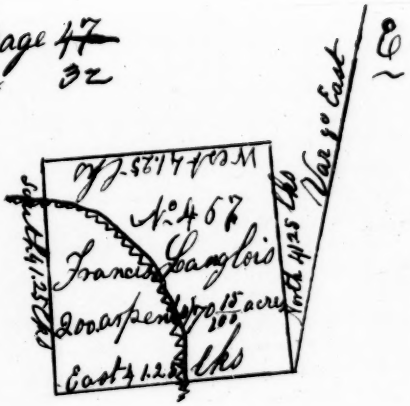
Survey No. 2903. Certificate No. 467.

Survey for Francis Langloise or his legal representatives, two hundred arpents of land, located by virtue of a New Madrid certificate: beginning at a post from which a pine 10 inches in diameter, marked thus, H. & R., bears S. 47° E. 8 links; thence south 7 chs. a creek 5 li'ks wide runs east; at 41.25 links set a post, from which a pine 15 inches in diameter bears N. 47½ E. 23 links; thence east 19.25 chs. to Hot Spring creek, 25 links wide, runs south; at 41.25 links set a post, from which a p. oak 10 inches in diameter bears S. 4° E. 6 links; thence *thence* north at 41.25 chs. set a post, from which a red oak, 6 inches in dia., bears S. 62 W. 16 links; thence west 41.25 links, to the beginning.

JAMES S. CONWAY, *D. Surveyor.*

July 16th, 1820.

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West 41.25 Chs
No 497
Francis Langlois
2 Arpents 15/100 acres
East 41.25 Chs
Sth 41.25 Chs
Sth 25½ East
Nor 3° East

(Endorsements of said bill:) No. 12. Bill of complaint of Henry M. Rector vs. Francis Langlois, Joseph Story, Samuel and Eliza A. Hammond, defendants, &c. Filed on this 21st day of July, A. D. 1852. John Jester, clerk.

STATE OF ARKANSAS,
County of Hot Spring.

In the circuit court of said county, in chancery, before the clerk of said court, in vacation, 21st day of July, A, D. 1852.

HENRY M. RECTOR, complainant, vs. FRANCIS LANGLOIS, JOSEPH STORY, Samuel Hammond, Eliza A. Hammond, wife of the said Samuel, or their unknown heirs, if they be deceased, defendants.	Bill for a decree of title against the defendants.

This day the said complainant files his bill in chancery against the said defendants, and also files the affidavit of Alfred Trigg, stating that Francis Langlois, Joseph Story, Samuel Hammond, Eliza A. Hammond, wife of the said Samuel, and their heirs, if they be deceased, are non-residents of this State.

This day personally appeared before me, an acting justice of the peace in and for the county of Hot Spring, State of Arkansas, Alfred Trigg, to me personally well known, and makes oath that to the best of his knowledge and belief certain persons named as defendants in a bill in chancery, filed by Henry M. Rector, complainant, in the Hot Spring circuit court, to wit, Francis Langlois, Joseph Story, Samuel Hammond, and Eliza A. Hammond, and their heirs, if they be deceased, are non-residents of the State of Arkansas.

As witness my hand and seal this 21st day of July, A. D. 1852.

FRS. A. WARD, *J. P.*

And it appearing that this is a suit instituted against the defendants for a decree of title to certain real estate in said county of Hot Spring, State aforesaid, it is therefore ordered that said Francis Langlois, Joseph Story, Samuel Hammond, Eliza A. Hammond, wife of the said Samuel, or their heirs, if they be deceased, be notified of the filing and pendency of the complainant's bill against them in this behalf, by publication in some newspaper printed in this State for the number of times and within the time prescribed by law, and that they be and appear before the judge of the circuit court of Hot Spring county, in the State of Arkansas, sitting in chancery, at the term of the circuit court to be begun

and held on the last Monday in August next, at the court-house in and for the said county of Hot Spring, then and there to plead, answer, or demur to the bill of complaint by said complainants in this behalf presented and filed, otherwise the same, together with the matters and things therein contained, will be taken as confessed by them, and a decree entered according to the prayer thereof.

STATE OF ARKANSAS,
County of Pulaski.

Be it remembered that on this day personally appeared before me, J. J. Thompson, an acting and duly commissioned justice of the peace in and for the township of Big Rock, in the county aforesaid, the undersigned, Wm. E. Woodruff, printer and publisher of the "Arkansas State Gazette and Democrat," a newspaper published in the city of Little Rock, and county aforesaid, who, being duly sworn, deposeth and saith, that an order of the circuit court of Hot Spring county, in the case of Henry M. Rector vs. Francis Langlois and others, a correct printed copy of which is hereto annexed, has been regularly published in said newspapers for two weeks in succession, the first insertion of which was on the 23d July, 1852, and the last on the 30th July, 1852.

WM. E. WOODRUFF.

Sworn to and subscribed this 30th day of July, 1852, before me.

JOHN J. THOMPSON, *J. P.*

STATE OF ARKANSAS,
County of Hot Spring.

At a circuit court in chancery, begun and holden in and for the county of Hot Spring, in the State of Arkansas, at the court-house in the town of Rockport, on the last Monday of August, in the year of our Lord one thousand eight hundred and fifty-two, being the thirtieth day of said month—present and presiding, the honorable Shelton Watson, judge of the sixth judicial circuit of said State, who holds this court pursuant to an arrangement with the honorable John C. Murray, judge of the second judicial circuit of said State, chancellor.

Pleas before the Hon. Shelton Watson on the 1st day of September, 1852, it being a subsequent day of said court.

HENRY M. RECTOR
vs.
FRANCIS LANGLOIS, JOSEPH STORY and others.

Came said complainant, and it appearing to the satisfaction of

the court, from the order of publication and affidavit thereto annexed, filed herein at a prior day of this term, which order and affidavit are of file and ordered so to remain and constitute part of the record herein, that said defendants, who are non-residents of the State, have been duly notified of the institution and pendency and objects of this suit, by publication of the said order for the time, in the manner, and for the number of times prescribed by law, and that defendants have wholly failed to appear, plead, or demur to the said bill.

It is therefore considered, ordered, adjudged, and decreed by the court here that the said bill, and all the matters and allegations thereof, be and the same is hereby taken as true and confessed as against the said defendants.

And it is further considered, ordered, adjudged, and decreed that all title, interest, estate, claim, or demand in law or equity of the said defendants, or any of them, in and to the said New Madrid certificate, and the lands selected and located in virtue thereof, do pass to and vest in the said complainant, his heirs and assigns, forever, and that the said defendants pay said complainant the costs of this suit.

And it is further considered and ordered, that unless the said defendants appear herein on or before the fourth day of the next term of this court, and then and there show cause for not before appearing, and plead answer or demur to the said bill, this decree shall become final and absolute, and then a full and complete decree will be herein entered, carrying fully into effect the objects of said bill, in conformity to the prayer thereof, and this case stands continued, &c.

Proceedings had September 2d, 1852, it being a subsequent day of said court.

HENRY M. RECTOR, complainant,
vs.
FRANCIS LANGLOIS, JOSEPH STORY, Samuel Hammond, and Eliza Hammond, his wife, defendants. } 12. In chancery.

Came the complainant by solicitor, and on leave asked and obtained files the authenticated copy of order of publication herein.

And it appearing that the defendants and each of them have failed to enter appearance herein, it is by the court ordered, adjudged, and decreed that the complainant's said bill of complaint, and the matters therein contained, be taken as true and confessed against said defendants.

THE STATE OF ARKANSAS,
County of Hot Spring.

On the last Monday of February, in the year of our Lord one thousand eight hundred and fifty-three, being the time required by law for the circuit court in chancery of the county of Hot Spring, in the State of Arkansas, to be holden at the court-house in the town of Rockport, the judge of said court failed to attend, and the court stands adjourned until to-morrow.

JNO. P. EMERSON,
Clerk.

Tuesday, March first, A. D. one thousand eight hundred and fifty-three, the court met at the court-house in the town of Rockport, in the county of Hot Spring, in the State of Arkansas:

Present, the honorable John C. Murray, judge of the second judicial circuit of said State, chancellor, presiding:

Proceedings had on the second day of March, 1853, it being a subsequent day of said court.

HENRY M. RECTOR
vs.
FRANCIS LANGLOIS, JOSEPH STORY, Samuel Hammond, and his wife, Eliza Hammond. } 12.

Comes the complainant, and it appearing to the court that the defendants had been regularly notified of the pendency and objects of this suit, by publication in the manner and for the time prescribed by law prior to the last term of this court, a copy of which order and an affidavit of such publication is of record herein, which is ordered to constitute a part of the proceedings, and remain of record herein; and that at the last term of this court said defendants wholly failed to appear and plead herein; whereupon at said term the said bill and the allegations thereof were ordered and decreed to be taken as true and confessed as against said defendants; and said defendants having still wholly failed to appear or plead herein, or to show any cause whatsoever against a final decree herein:

And it *is* now appearing to the court here that said Francis Langlois, by virtue of the act of Congress of the 17th of February, 1815, for the relief of the inhabitants of the late county of New Madrid, in then Territory of Missouri, was entitled to two hundred arpents of land, and to locate the same in conformity to said act of Congress; and in evidence of such right of said Francis, about 26th November, 1818, Frederick Bates, recorder of land titles for the Territory of Missouri, in conformity to said act of Congress, issued

to said Francis a location certificate, commonly called a New Madrid certificate, giving the right to said Francis and his legal representatives to locate or enter, by virtue thereof, with the principal deputy surveyor for the Territory of Missouri, said two hundred arpents of land, on any of the public lands in said Territory the sale of which was authorized by law; which right of location and certificate, by his deed dated about 10th Nov., 1818, said Francis Langlois empowered and authorized said Joseph Story, with full power of substitution, to sell and convey said right and certificate absolutely, and select and locate the lands in virtue thereof; and said Story, about 24th day of February, A. D. 1820, by his deed, granted, bargained, and sold said certificate and right of entry to said Samuel Hammond and Elias Rector, with covenants of warranty; and said Samuel Hammond and Eliza Hammond, his wife, by their deed dated 19th February A. D. 1819, granted, bargained, and sold unto said Elias Rector, his heirs and assigns forever, in fee simple, the said certificate and right of entry, and the lands selected and located in virtue thereof, as next mentioned, with covenants of warranty; that said Hammond and Rector, while owners of said claim, in pursuance of said act of Congress, A. D. 1819, by application and notice addressed to General William Rector, surveyor general of Illinois and Territory of Missouri, located said New Madrid certificate upon and selected the hot springs on the waters of the Washita river, now in the State of Arkansas, including said hot springs, the exterior lines of which location to run to the cardinal points, and to be surveyed in a square tract, which said hot springs now lie in the said county of Hot Springs; and in accordance with said notice of location, the boundary lines of said lands and survey were marked and surveyed, and the courses thereof established, about the 16th day of July, A. D. 1820, by James S. Conway, deputy surveyor under said General William Rector aforesaid, which survey, field notes thereof, and plats were duly returned to said file in the office of the surveyor general aforesaid in duplicate; that afterwards, about the 28th day of February, 1838, one John C. Hale, deputy surveyor of the United States, by an order of Edward Cross, surveyor general of the United States for the State of Arkansas, made a resurvey of said location of said Madrid certificate on said springs, and returned the plat and field notes thereof to said surveyor general's office, which survey, so made by said Hale, as such deputy surveyor, contains, as granted by said act of Congress, and as stated in said certificate by said Frederick Bates, dated 26th Nov., 1818, No. 467, two hundred arpents, equal to one hundred and seventy and fifteen hundredths acres of land, and describes and identifies the lands as follows—the variation of the compass being 8° 45 east—to wit.:

Beginning at the main Hot Spring of Arkansas, thence 45° east on an unmarked line 29.17 chains, where was set a post, the south-

east corner of said survey, from which a pine 24 inches diameter bears north 7° east 40 links, and a pine, 16 inches diameter, bearing north 67° west 53 links, each marked P. S. and B. T.; thence north, with the line of the survey, at 204 links a white oak, 13 inches diameter, at 41.25 chains, to a post, the north corner said survey, from which a pine, 16 inches diameter, bears north 42° east 15 links, and a black oak, 8 inches diameter, bears south 68° west 15 links, each marked P. S. and B. T.; thence west at 355 links a white oak, 24 inches diameter, at 41.25 chains, to post set, the northwest corner of said survey, from which a white oak, 16 inches diameter, bears north 10° east 48 links, and a white oak, 18 inches diameter, bears south 58° east 56 links, each marked P. S. and B. T.; thence south at 60 links a white oak; at 12.10 chains Hot Spring creek bears east; at 41.25 chains to a post, the southwest corner of said survey, from which a black oak, 6 inches diameter, bears north 48° east 21 links, and black oak, 10 inches in diameter, bears north 28° west 20 links; thence east at 563 links a black oak, 12 inches diameter, at 18.87 chains Hot Springs creek bears south at 41. 25 chains, the southeast corner of said survey; the main hot spring being in the centre thereof. Which survey, numbered 2903, plat, map, and field notes, were transmitted to the recorder of land titles at St. Louis, Missouri, who was then Frederick R. Conway, that the patent therefor might issue according to law, with which were also transmitted the notice of selection and location on said hot springs by said Hammond and Rector, &c.; whereupon said Frederick R. Conway, in conformity to law, issued a patent certificate upon and in conformity to said survey to and in favor said Langloise or his representatives, establishing and evidencing their right to said lands so surveyed and selected, to the end that patent from the government of the United States might issue, which patent, however, never has issued; that said complainant is sole heir of Elias Rector, and is now entitled to the absolute fee in and to the said lands, and to a conveyance thereof in absolute fee from said defendants, and to have vested in him and heirs forever all and every right of said defendants and every of them, and to said right, and certificate, and lands, and to have his title quieted and forever settled in respect thereto, as against said defendants and those claims under them or any of them.

It is therefore considered, ordered, and adjudged and decreed by the court here that the said Francis Langlois, Joseph Story, and Samuel Hammond, and Eliza, his wife, and each of them severally, make, seal, and deliver a deed or deeds, in absolute fee, to the said complainant, his heirs and assigns, forever, for all their right, interest, and estate of each and every of them in and to the said rights under said act of Congress, and said certificate and the lands so surveyed and selected as aforesaid, including said hot springs, and that the absolute right and title in fee to said certifi-

cate location, and the aforesaid lands be and the same is hereby divested out of said defendants and each and every of them, and those holding under them, or any of them, and transferred to and vested in the said complainant, his heirs and assigns, forever, and title of said complainant, his heirs and assigns, be and the same is hereby finally declared and established and perpetually quieted and settled as to the said defendants and each and every of them.

And it is further decreed that said defendants pay the costs of this suit, &c.

HENRY M. RECTOR
vs.
FRANCIS LANGLOIS, Joseph Story, and Samuel Hammond, and his wife, Eliza Hammond. } 12.

Came the complainant and it appearing to the court that the defendants had been regularly notified of the pendency and object of this suit by publication in the and for the time prescribed by law prior the last term of this court, a copy of which and an affidavit of such publication is of record herein, which is ordered to constitute a part of the proceedings, and remain of record herein; and that at the last term of this court said defendants wholly failed to appear and plead herein; whereupon, at said term, the said bill and the allegations thereof were ordered and decreed to be taken as true and confessed as against said defendants; and said defendants having still wholly failed to appear or plead herein, or to show any cause whatever against a final decree herein, and it appearing to the court here that said Francis Langlois, by virtue of the act of Congress of 17th February, 1815, for the relief of the inhabitants of the late county of New Madrid, in the Territory of Missouri, was entitled to two hundred arpents of land, and to locate the same in conformity to said act of Congress, and *and* in evidence of such right of said Francis, about the 26th of November, 1818, Frederic Bates, recorder of land titles for the Territory of Missouri, in conformity to said act of Congress, issued to said Francis a location certificate, commonly called a New Madrid certificate, giving the right to said Francis and his legal representatives to locate or enter, by virtue thereof, with the principal deputy surveyor for the Territory of Missouri, said two hundred arpents of land on any of the public lands in said Territory the sale of which was authorized by law, which right of location, by his deed dated about the 10th of November, 1818, said Francis Langlois empowered and authorized said Joseph Story, with full power of substitution, to sell and convey said right and certificate absolutely, and select and locate the lands in virtue thereof; and said Story, about 24th day of February, A. D. 1820, by his deed, granted, bargained, and sold said

certificate and right of entry to said Samuel Hammond and Elias Rector, with covenants of warranty: and said Samuel Hammond and Eliza Hammond, his wife, by their deed dated the 19th of February, 1819, granted, bargained, and sold unto said Elias Rector, his heirs and assigns, forever, in fee-simple, the said certificate and right of entry, and the land so selected and located in virtue thereof, as next mentioned, with covenants of warranty that said Hammond and Rector, while owners of said claim, in pursuance of said [act] of Congress A. D. 1819, by application and notice addressed to General William Rector, surveyor general of Illinois and Territory of Missouri, located said New Madrid certificate upon and selected the hot springs, on the waters of the Washitaw river, now in the State of Arkansas, including said hot springs, the extreme lines of which location to run the cardinal points, and to be surveyed in a square tract, which said hot springs now lie in said county of Hot Springs; and in accordance with said notice of location the boundary lines of said survey marked and surveyed and the courses thereof established about the 16th day of July, A. D. 1820, by James S. Conway, deputy surveyor, under said General William Rector aforesaid, which survey, field notes thereof, and plats, were duly returned to said file in the office of the surveyor general aforesaid, in duplicate; that afterwards, about the 28th day of February, 1838, one John C. Hale, deputy surveyor of the United States, by order of Edward Cross, surveyor general of the United States for the State of Arkansas, made a resurvey of said location of said Madrid certificate on said springs, and returned the plat and field notes thereof to said surveyor general's office, which survey so made by said Hale as such deputy surveyor contains, as granted [by] said acts of Congress, and as stated in said certificate by said Frederic Bates, dated 26th November, 1818, No. 467, two hundred arpents, equal to one hundred and seventy and fifteen-hundredths acres of land, and describes and identifies the lands as follows—the variation of the compass being 8° 45 east, to wit: beginning at the Hot Spring of Arkansas, thence south 45° east, on an unmarked line 29.17 chains, where was set a post the southeast corner of said survey from which a pine 24 inches diameter bears north 70° east 40 links, and a pine 16 inches in diameter, bearing north 67° west 59 links, each marked P. S. and B. T.; thence north with the line of said survey at 204 links a white oak 13 inches diameter, at 41.25 chains, to a post the northeast corner said survey, from which a pine 16 inches diameter bears north 42° east 15 links, and a black oak 8 inches diameter bears south 68° west 15 links, each marked P. S. and B. T.; thence west, at 355 links, a white oak 24 inches diameter, at 41.25 chains to a post the southwest corner of said survey, from which a white oak 16 inches diameter bears north 10° east 48 links, and a white oak 18 inches in diameter bears south 58° east 56 links, each marked P. S. and B. T.; thence south at 60

links a white oak at 12.10 chains: hot spring creek bears east at 41.25 chains to a post the southwest corner of said survey, from which a black oak 6 in. diameter bears north 48° east 21 links, and a black oak 10 inches in diameter bears north 28° west 20 links; thence east at 563 links a black oak 12 inches diameter, at 18.87 chains—Hot Spring creek bears south at 41.25 chains to the southeast corner of said survey—the main hot spring being in the centre thereof; which survey, numbered 2903, plat, map, and field notes, were transmitted to the recorder of land titles at St. Louis, Missouri, who was then Frederic R. Conway, that the patent therefor might issue according to law; with which were also transmitted the notice of selection and location on said hot springs by said Hammond and Rector, &c. Whereupon said Frederic R. Conway, in conformity to law, issued a patent certificate upon and in conformity to said survey to and in favor [of] said Langlois, or representatives, establishing and evidencing their right to said lands so *survey* and selected to the end that patent from government of the United States might issue, which patent, however, never has issued; that said complainant is sole heir of Elias Rector, and is now entitled to the absolute fee in and to the said lands, and to a conveyance thereof in absolute fee from said defendants, and to have vested in him and his heirs forever all and every right of said defendants and every of them, and to said right and certificate and lands, and to his title, quieted and forever settled in respect thereto as against said defendants and those claims under them or any of them.

It is therefore considered, ordered, and adjudged and decreed by the court here that the said Francis Langlois, Joseph Story, and Samuel Hammond and Eliza, his wife, and each of them, severally do make, seal, and deliver a deed or deeds in absolute fee to the said complainant and his heirs and assigns, forever, for all their right, interest, and estate of each and every of them in and to the said right under said act of Congress, and said certificate and the lands so surveyed and selected as aforesaid, including said hot springs; and that the absolute right and title in fee to said right, certificate, location, and the aforesaid lands be and the same is hereby divested out of said defendants, and each and every of them, and those holding under them or any of them, and transferred to and vested in the said complainant, his heirs and assigns, forever; and title of said complainant, his heirs and assigns, be and the same is hereby finally declared and established, and perpetually quieted and settled as to the said defendants, and each and every of them. And it is further decreed that said defendants pay the costs of this suit, &c.

STATE OF ARKANSAS,
County of Hot Spring.

I, Jno. P. Emerson, clerk of the circuit court in and for the

county and State aforesaid, do hereby certify that the foregoing five pages contain a true, perfect, and correct transcript from the record in the foregoing cause.

In testimony whereof, I have hereunto set my hand as such clerk, and affixed the seal of office thereto, at Rockport, on this [L. S.] 23d day of March, 1853.

JNO. P. EMERSON, *Clerk.*

STATE OF ARKANSAS,
County of Hot Spring.

I, Jno. P. Emerson, clerk of the court, and ex officio recorder in and for the county and State aforesaid, do hereby certify that the foregoing instrument of writing was *file* in my office for record on the 23d day of March, 1853, and is now duly recorded in record D, on pages 205, 206, 207, 208, and 209.

In testimony whereof, I have hereunto set my hand *a* such clerk, and affixed the seal of office thereto, at Rockport, on this [L. S.] 23d day of March, A. D. 1853.

JNO. P. EMERSON,
Clerk and ex-officio Recorder.

To the reading whereof said plaintiffs objected, and the court refused to permit the same to be read in evidence to the jury at all for any purpose. To which opinion and proceedings of the court in so refusing to permit said record and proceedings to be read as evidence defendants excepted at the time, and had time given him until now to prepare and tender his exceptions in respect thereof. And said defendants then offered to read in evidence, and prove the same was made and marked upon the land as therein shown—the following original survey of said New Madrid location, to wit:

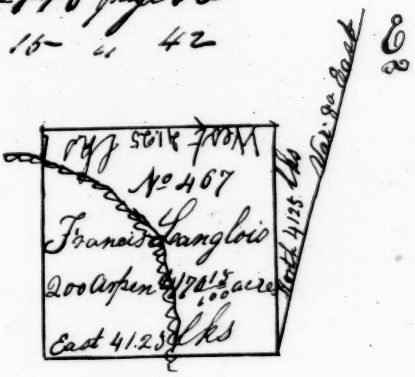
(For plat, see original, page 63.)

Survey No. 2903. Certificate No. 467.

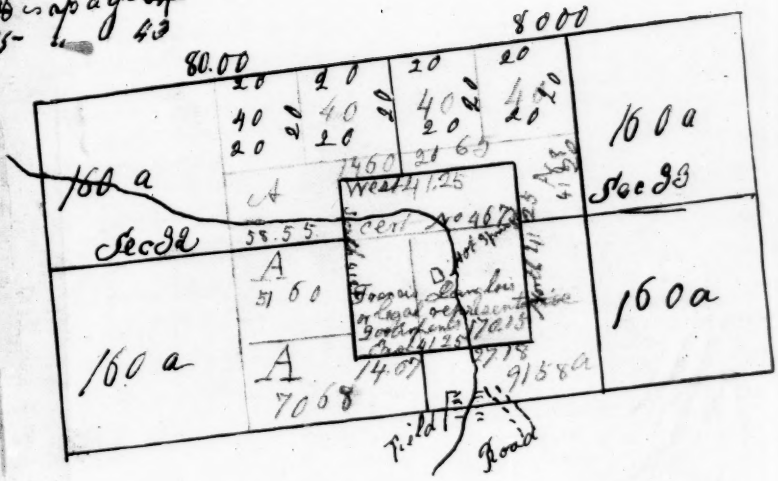
Survey for Francis Langlois or his legal representatives, two hundred arpents of land, located by virtue of a New Madrid certificate: beginning at a post from which a pine 10 inches in diameter, marked thus, H. & R., bears S. 47° E. 8 links; thence south 7 chs. a creek 15 links wide runs east; at 41.25 chs. set a post, from which a pine 15 inches in diameter bears N. 47½ E. 23 links; thence east 19 chs. 25 lks. to Hot Spring creek, 25 links wide, runs south; at 41 chs. 25 lks. set a post, from which a P oak 10 inches in diameter bears S. 84° E. 0 links; thence north at 41 chs. 25 lks. set a post, from which a red oak, 6 inches in diameter, bears

No 196
16

No 196 page 62
15 " 42



No 146 on page 64
15- 43



S. 62° W. 16 links; thence west 41 chs. and 25 links, to the beginning.

JAMES S. CONWAY,
D. Surveyor.

July 16th, 1820.

Which survey and certificate, and the proof of its being actually made and marked upon the land as therein it purports to have been by the deputy surveyor of the United States, the plaintiffs moved to exclude and reject as evidence, and the court accordingly rejected and refused to permit the same to be read or placed before the jury as evidence. To which opinion and proceedings of the court in so rejecting said evidence so offered defendants excepted at the time, and had time until now to tender and prepare their exceptions in respect thereof.

And thereupon defendants offered to read in evidence to the jury the following plat, survey, and field notes of the lands in controversy, and the two sections adjoining, and to prove the same was a correct plat and copy of the only survey, plat, or map ever made, filed with, or approved by the surveyor general of U. S. in Arkansas, and was the official survey of said lands embracing said Langlois' New Madrid claim, and no survey or lines ever had been run inside of said New Madrid survey by the United States or her officers, to wit:

Town. 2 south, range 19 west.

(For plat, see original, page 64.)

SURVEYOR'S OFFICE,
Little Rock, Arks., 25th Aug't, 1855.

I certify that the above plat or diagram of sections 32 and 33, T. 2 S., R. 19 W., is a true copy from the original plat on file in this office.

H. M. RECTOR,
Sur. Gen'l.
JNO. HUTT,
Chf. Clerk.

Field notes for line between sections 32 and 33, T. 2 S., R. 19 west, copied from the regular field notes.

North, between sections 32 and 33, T. 2 S., R. 19 W. 3.05. A black oak, 16 inches dia. 13.38. Private survey of Francis Langlois: set a post 14.07 east of the southwest corner to said private survey cor. to sec. 32 and 33, from which a water oak 20 ins. dia. bears S. 37 E. 68 links, a gum 12 ins. dia. bears

S. 27 W. 23 links 34.00 at a point due west of the main hot spring, and 7.20 therefrom.

54.69. Intersected the north boundary of survey of Francis Langlois 14.60 east of the northwest corner of survey. Set a post corner to sections 32 and 33, from which a pine 14 ins. dia. bears N. 17 west 12 links, a pine 16 ins. dia. bears N. 27 E. 31 links. 80,00. Set a post corner to sections 32, 33, 28, and 29, &c.

Certificate No. 467.

(Copied from book for recording the surveys of land titles.)

Surveyed for Francis Langlois, or his legal representatives, who claims location by virtue of certificate No. 467, issued by Frederick Bates, recorder of land titles, on the 26th November, 1818, two hundred arpents, equal to one hundred and seventy and fifteen-hundredth acres of land, beginning at the main hot spring of Arkansas, thence S. 45 E. on an unmarked line 29.17 chains, where set a post the southeast corner of said survey, from which a pine 24 ins. dia. brs. N. 7. E. 40 lks., and a pine 16 ins. dia. bears N. 67 W. 53 lks., each marked P. S. and B. T.; thence north (with the line of the survey) at 204 lks., a white oak 13 ins. dia. at 41.25 chs., set a post the northeast corner of said survey, from which a pine 16 ins. dia. brs. N. 45° E. 14 lks., and a black oak 8 ins. dia. bears S. 68 W. 15 lks., each marked P. S. and B. T.; thence west at 355 lks. a white oak 24 ins. dia. at 41.25 chs., set a post the northwest corner of said survey, from which a white oak 16 ins. dia. bears N. 10 E. 48 links, and a white oak 18 inches dia. brs. S. 58 E. 56 links, each marked P. S. and B. T.; thence south at 60 links, a white oak at 12.10 chs.; Hot Spring creek bears east at 41.25 chs., set a post the south-west corner of said survey, from which a black oak 6 in. dia. brs. N. 48 E. 21 links, and a black oak 10 ins. dia. brs. N. 28 W. 50 links; thence east at 563 lks. a black oak 12 ins. dia. at 18.87 chs.; Hot Spring creek bears south at 41.25 chs., the southeast corner of said survey.

In conformity with instructions from the surveyor general, I have surveyed the foregoing location or claim in the name of Francis Langlois, so that the main hot spring is in the centre thereof.

28th February, 1838.

JOHN C. HALE, *D. S.*

Which survey, plat, and field notes plaintiffs admitted only for the purposes of this trial to be the only official survey of said lands ever made or approved by the United States of the lands embraced therein. But, on motion of plaintiffs, said map, plat, survey, and

field notes were excluded from the jury as evidence in the cause. To which opinion and proceedings of the court in so excluding said evidence so offered defendants excepted at the time, and had time given them until now to tender his exceptions in respect thereof.

Defendant then offered to read in evidence to the jury a copy from the record of the contract or instrument executed by L. Belding to John Percifull, dated in 1831, and proved and recorded in said county, purporting to be a declaration of Belding that he had no right to the possession of Hot Springs or the buildings, except under Percifull, and that the same were to be surrendered to him, a copy whereof, with the certificates of proof and record whereof, the clerk is here to insert and *make* part hereof by consent, at the same time said Rector making affidavit that the original never was in his possession, and had been sent to the General Land Office, at Washington city, and has there been lost or mislaid, so that the same cannot now be found or produced, said defendant offering at the same time orally to prove that said Belding in his lifetime had acknowledged said instrument to be genuine, and the same had been delivered by him to the said Percifull in his lifetime as a valid and binding instrument.

Know all men by this declaration, that I, L. Belding, of the county of Hot Springs, and Territory of Arkansas, do acknowledge and make known that I, the said Belding, did lease the buildings and improvements at the Hot Springs of John Percifull, and acknowledge his right to said improvements, and that I have now before this date leased said buildings and all the privileges (except three cabins, two of which are not mine) to Richard C. Hawkins until the first day of January, eighteen hundred and thirty-three; then and at which time I, the said Belding, agree and bind myself to deliver all and every part of the buildings and improvements at said Hot Springs that I have or ever had, in the same condition as said Hawkins is to deliver to me, unto John Percifull, if he demands the same, and that I have no pretensions to the improvement of said Springs, except under the claim of the said John Percifull.

Given under my hand this 2d April, 1831.

L. BELDING.

STATE OF ARKANSAS,
County of Hot Spring.

Be it remembered that Warren Dunham this day appeared in the county court in session at Hot Spring, and being duly sworn for the purpose, on oath deposeth and saith, that the annexed and foregoing instrument of writing is in the handwriting of L. Beld-

S. 27 W. 23 links 34.00 at a point due west of the main hot spring, and 7.20 therefrom.

54.69. Intersected the north boundary of survey of Francis Langlois 14.60 east of the northwest corner of survey. Set a post corner to sections 32 and 33, from which a pine 14 ins. dia. bears N. 17 west 12 links, a pine 16 ins. dia. bears N. 27 E. 31 links. 80,00. Set a post corner to sections 32, 33, 28, and 29, &c.

Certificate No. 467.

(Copied from book for recording the surveys of land titles.)

Surveyed for Francis Langlois, or his legal representatives, who claims location by virtue of certificate No. 467, issued by Frederick Bates, recorder of land titles, on the 26th November, 1818, two hundred arpents, equal to one hundred and seventy and fifteen-hundredth acres of land, beginning at the main hot spring of Arkansas, thence S. 45 E. on an unmarked line 29.17 chains, where set a post the southeast corner of said survey, from which a pine 24 ins. dia. brs. N. 7. E. 40 lks., and a pine 16 ins. dia. bears N. 67 W. 53 lks., each marked P. S. and B. T.; thence north (with the line of the survey) at 204 lks., a white oak 13 ins. dia. at 41.25 chs., set a post the northeast corner of said survey, from which a pine 16 ins. dia. brs. N. 45° E. 14 lks., and a black oak 8 ins. dia. bears S. 68 W. 15 lks., each marked P. S. and B. T.; thence west at 355 lks. a white oak 24 ins. dia. at 41.25 chs., set a post the northwest corner of said survey, from which a white oak 16 ins. dia. bears N. 10 E. 48 links, and a white oak 18 inches dia. brs. S. 58 E. 56 links, each marked P. S. and B. T.; thence south at 60 links, a white oak at 12.10 chs.; Hot Spring creek bears east at 41.25 chs., set a post the south-west corner of said survey, from which a black oak 6 in. dia. brs. N. 48 E. 21 links, and a black oak 10 ins. dia. brs. N. 28 W. 50 links; thence east at 563 lks. a black oak 12 ins. dia. at 18.87 chs.; Hot Spring creek bears south at 41.25 chs., the southeast corner of said survey.

In conformity with instructions from the surveyor general, I have surveyed the foregoing location or claim in the name of Francis Langlois, so that the main hot spring is in the centre thereof.

28th February, 1838.

JOHN C. HALE, *D. S.*

Which survey, plat, and field notes plaintiffs admitted only for the purposes of this trial to be the only official survey of said lands ever made or approved by the United States of the lands embraced therein. But, on motion of plaintiffs, said map, plat, survey, and

field notes were excluded from the jury as evidence in the cause. To which opinion and proceedings of the court in so excluding said evidence so offered defendants excepted at the time, and had time given them until now to tender his exceptions in respect thereof.

Defendant then offered to read in evidence to the jury a copy from the record of the contract or instrument executed by L. Belding to John Percifull, dated in 1831, and proved and recorded in said county, purporting to be a declaration of Belding that he had no right to the possession of Hot Springs or the buildings, except under Percifull, and that the same were to be surrendered to him, a copy whereof, with the certificates of proof and record whereof, the clerk is here to insert and *make* part hereof by consent, at the same time said Rector making affidavit that the original never was in his possession, and had been sent to the General Land Office, at Washington city, and has there been lost or mislaid, so that the same cannot now be found or produced, said defendant offering at the same time orally to prove that said Belding in his lifetime had acknowledged said instrument to be genuine, and the same had been delivered by him to the said Percifull in his lifetime as a valid and binding instrument.

Know all men by this declaration, that I, L. Belding, of the county of Hot Springs, and Territory of Arkansas, do acknowledge and make known that I, the said Belding, did lease the buildings and improvements at the Hot Springs of John Percifull, and acknowledge his right to said improvements, and that I have now before this date leased said buildings and all the privileges (except three cabins, two of which are not mine) to Richard C. Hawkins until the first day of January, eighteen hundred and thirty-three; then and at which time I, the said Belding, agree and bind myself to deliver all and every part of the buildings and improvements at said Hot Springs that I have or ever had, in the same condition as said Hawkins is to deliver to me, unto John Percifull, if he demands the same, and that I have no pretensions to the improvement of said Springs, except under the claim of the said John Percifull.

Given under my hand this 2d April, 1831.

L. BELDING.

STATE OF ARKANSAS,
County of Hot Spring.

Be it remembered that Warren Dunham this day appeared in the county court in session at Hot Spring, and being duly sworn for the purpose, on oath deposeth and saith, that the annexed and foregoing instrument of writing is in the handwriting of L. Beld-

ing, whose name is subscribed thereto, and that said L. Belding did, within a short time after the date thereof, proffer to acknowledge the same as for his act and deed for the purposes therein set forth, and that he, the deponent, was at that time the acting judge of Hot Spring county; and further this deponent saith not.

his
WARREN ⋈ DUNHAM.
mark.

Sworn and subscribed to in open court this 5th day of January, A. D. 1842.

Attest:

LAWSON RUNYON, *Clerk.*

STATE OF ARKANSAS,
County of Hot Spring.

Be it remembered that H. A. Whittington and Cumberland Polk this day appeared in open court of the county of Hot Spring, and on their oaths depose and say, that the annexed and foregoing instrument of writing is, to the best of their knowledge and belief, in the handwriting of L. Belding, whose name appears upon and is subscribed thereto; that they have often seen him write; and further these deponents say not.

H. A. WHITTINGTON,
C. POLK.

Sworn to and subscribed in open court this 5th day of January, 1842.

Attest: LAWSON RUNYON,
Clerk.

STATE OF ARKANSAS,
County of Hot Spring.

I, Lawson Runyon, clerk of the circuit court and ex-officio recorder within and for the county of Hot Spring, and State aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 10th day of January, eighteen hundred and forty-two, and the same is now duly recorded in record book A of deeds and mortgages, pages 265, 266, 267.

In testimony whereof, I have hereunto set my hand as such clerk, and affixed the seal of my office, at Hot Spring, this [L. S.] tenth day of January, A. D. eighteen hundred and forty-two.

LAWSON RUNYON,
Clerk and ex-officio Recorder.

But the court wholly rejected, on motion of plaintiffs, all of said evidence so offered as last aforesaid. To which opinion and proceedings of the court in so rejecting and excluding said testimony, and each and every part thereof, defendant excepted at the time, and had until now to prepare and tender his exceptions in respect thereof.

Whereupon defendants offered to read in evidence to the jury the following certified list of New Madrid location in the State of Arkansas, to wit:

List of certificates issued by the recorder of land titles, under the the relief of the inhabitants of the late county of New Madrid, in been located in the present Territory of Arkansas.

RECORDER'S CERTIFICATE.

No.	Date.	Quantity.		To whom issued.	Date.
No.		Acres	Arps.		
2512 8	12 Nov'r, 1815	160	.....	Francis Lesieur	30th Nov'r, 1819
2493 15	12 Nov'r, 1815	160	.....	Peter Porter	31st Jan'y, 1820
2518 33	30th Nov'r, 1816	.....	.....	John Dorlac or reps....	26th Feb'y, 1819
2479 140	5th Sept., 1816	640	.....	Elizabeth Jones	25th April, 1823
2489 156	30th Nov'r, 1815	640	.....	Henry Cockherham.....	30th Oct., 1820
2487 158	29th Oct., 1816	.....	240	Benjamin Demint, assigneeof Robt. White, assignee of Francis Racine.	16th July, 1822
01 172	16th Dec., 1816	480	.....	Richard J. Waters, as derived from Benj'n Harrison.	14th April, 1823
2538 201	4th Decem., 1816	640	.....	Andrew Robertson, sen.	16th April, 1823
2823 236	14th Jan'y, 1817	.....	320	Benjamin Tooy, under William Porter.	11th April, 1823
2933 237	14th Jan'y, 1817	640	.....	Caty Gollowhorn.....	21st Decb., 1819
2741 264	30th Nov'r, 1815	160	.....	Eloy Dejarlais.....	24th Feb'y, 1819
2772 327	28th Nov'r, 1815	640	.....	Andrew Woods.....	4th Feb'y, 1823
2841 397	12th Aug., 1818	.....	300	Francis Trenchard.....	25th April, 1823
2829 417	18th Aug., 1818	640	.....	Ignace Hunt.....	24th Feb'y, 1823
2950 461	12th Nov'r, 1818	640	.....	Phebe Dunn.....	22d March, 1823
2942 468	26th Nov'r, 1818	160	.....	P. St. Mary.....	25th April, 1823
35 472	Not dated.	160	.....	Francis St. Mary.	25th April, 1823
2705 477	30th Nov'r, 1818	640	.....	Edward Procter.....	4th Feb'y, 1823
**** 2931 514	5th Sept., 1816	.....	320	Augustin Gonzales.....	21st Dec., 1819
2932 515	5th Sept., 1815	.....	320	John Frs. Almondras..	21st Dec., 1819
2903 467	26th Nov'r, 1818	.....	200	Francis Langlois.....	27th Jan., 1819
2853 504	....	640	.....	John Loyed.	

act of Congress of the 17*th February*, 1815, *entitled "An act for the Territory of Missouri, who suffered by earthquakes," which have*

LOCATION.				
At whose instance.	Where situate.			
	Twp.	Range.	Merid.	
Jas. C. Canfield.....	1 N.	12 W.	5th prin.	
Stephen H. Long, by Wm. M. O'Hara.	1 N.	12 W.	5th prin.	
Wm. M. O'Hara and Stephen Faustin.	.....	.....	.....	On Big Red river.
James Russell, agent for William Russell.	19 S.	25 W.	5th prin.	
W. M. O'Hara.....	1&2 N.	12 W.	5th prin.	
Wm. Russell.....	2 S.	5 E.	5th prin.	
Joel Campbell.....	19 S.	26 W.	5th prin.	
Jas. Hickman.....	19 S.	25 W.	5th prin.	
George W. Frisbee, administrator of Robert W. Desha, dead.	3 N.	14 W.	5th prin.	South of Arkansas river.
William Russell, agent for the heirs of Caty Gollowhorn.	8 N.	8&9 E.	5th prin.	
Wm. M. O'Hara and Stephen Faustin.	1 N.	12 W.	5th princl.	South of Arkansas river, near Little Rock.
James S. Conway.....	18 S.	25&26 W.	5th princl.	
James S. Conway.....	19 S.	25 W.	5th princl.	
George Bently, by William Russell, his agent.	5 N.	16 W.	5th prin.	
William Russell, agent for Phebe Dunn's heirs.....	2 N.	5 E.	5th prin.	
James S. Conway.....	19 S.	26 W.	5th prin.	
A. H. Evans.....	19 S.	2 SW.	5th prin.	
James S. Conway, agent for Joseph Paxton.	19 S.	25&26 W.	5th P. M.	
Wm. Russell, agent for Augustin Gonzales.	7 N.	8 E.	5th P. M.	
John Frs. Almondras.				
Samuel Hammond and Elias Rector.	.....	.....	.....	To include the hot springs on the Washita river.

SURVEYOR'S OFFICE,
Little Rock, Arks., June 12th, 1855.

The above list of certificates and locations made in the territory of Arkansas, under the act of Congress passed the 17th February, 1815, entitled "An act for the relief of the inhabitants of the county of New Madrid, in Missouri territory, who suffered by earthquakes," is a true copy of the schedule on file in this office; the original having been made out in the surveyor's office in St. Louis, Missouri, and transmitted to this office, with other books, papers, and documents, on its organization in the year 1832. Obliterations supplied and marked thus *, pencil marks excluded.

C. LANGTREE, *Chief Clerk.*
H. M. RECTOR, *Gen'l Sur., Arks.*

But the same, on motion of plaintiffs, was rejected as evidence, and defendants excepted at the time, and had time given until now to tender and prepare their exceptions in respect thereof.

Defendants then offered to prove, by a succession of leases and transfers, that said defendants were now the owners of all the right of the said John Percifull in and to the lands in controversy, and hold under him as their predecessors in possession have done.

But the court refused to permit any such proof to be made, *two* which defendants at the time excepted, and had time until now to prepare and tender their exceptions in respect thereof.

Whereupon defendants had sworn in their behalf Hiram A. Whittington, who testified:

I came to Hot Spring county in 1832, and have ever since been acquainted with the quarter-section of land in controversy, and generally with the persons living thereon, and the improvements made; said quarter-section, as well as the New Madrid claim *claim*, include the hot springs, and the occupants have improved on the lands, including all said quarter-section—the springs to value of some $10,000, I think, in all, or perhaps more. The parties making the improvements, so far as I know, have held under Percifull's claim of right, and Rector also, under the New Madrid claim, since he has been there. All parties claimed adversely to Belding. The rents of the naked land would be worth very little. The rents of the property occupied by Stidham & Warren would have been worth some $1,500 per year since 1851, and the improvements made on same are worth some $4,000 or $5,000. Stidham rents from Rector the property I have been speaking of. Improvements made on the Stidham property before this suit were worth from $2,000 to $2,500, and those since are worth about the same.

C. Hale, being sworn, states, I have lived at Hot Springs, and am acquainted with the business. There is very little profit to be derived from business there—I allude more particularly to tavern or boarding-house keeping. It breaks nearly everybody who undertakes it, I believe. I think the improvements or property occu-

pied by Stidham & Warren for some years past are worth $6,000 or $8,000, and on the whole quarter-section in controversy are worth some $15,000. The improvements were all made by persons claiming adversely to Belding.

The property occupied by Stidham & Warren would not have rented for more than $1,200 the two first years they had it, and the last year perhaps a little more, which was all the evidence given or offered in the cause.

Whereupon plaintiffs moved the court to instruct the jury as follows, to wit:

GAINES et als.
vs.
STEADHAM et als.

The plaintiffs move the court to instruct the jury—

1. That the certificates offered and read in evidence by the plaintiffs are sufficient in law to enable them to maintain this action.

2. That if the jury believe from the evidence that the defendants were in possession of the premises mentioned in the declaration at the time of the commencement of this action, they ought to find for the plaintiffs.

3. That the plaintiffs, if entitled to recover, are also entitled to recover, by way of damages, the rents and profits of said premises from the time of the commencement of this suit down to the present time, according as the jury shall find the value of such rents and profits from the evidence adduced before them.

Each and all which instructions the court gave against the objections of defendants. To the giving each and every of which defendants excepted at the time, and had time till now to tender their exceptions in respect thereof.

1st. The jury can only find for the plaintiffs for the lands and premises sued for in this cause, in case they have proven to the satisfaction of the jury that there is such quarter-section of land as that in the declaration mentioned, fixed, and established by the public surveys of the United States, and so platted and recognized in the surveyor general's office, and local land offices where the land was sold, including the premises referred to in the proof.

2d. If the jury believe from the evidence that the premises referred to in the proof are situate within the survey made, approved, and established by the surveyor general of Arkansas of a New Madrid or other private claim which lay over and upon the north and south line dividing sections 32 and 33, and the public survey was closed upon the private claim, and the sections surveyed into fractions, and no lines were run or corners established within the private survey, which covered all that portion of the section line on which could alone have been established the quarter-section corner, and the jury are satisfied the premises mentioned in the

proof lie within the private survey,—plaintiffs cannot recover in this action, no private survey or running of lines being legitimate evidence of the locality of such premises within the quarter-section named, if never actually surveyed by the government, and its locality definitely fixed upon the public surveys and plats.

3d. If the jury find from the evidence that the defendants or those from whom they claim made improvements on the property in controversy in good faith under claim of title, the plaintiffs in this action may recover such improvements, but they cannot recover rents for such improvements.

4th. Plaintiffs, upon the evidence in this cause, can only recover rents such as the property unimproved would have brought either before or since suit brought.

5th. Though the United States may regulate at pleasure the disposition of the absolute title to the soil, the State may absolutely fix at will such rules as she may deem just as to the recovery of rents where improvements have been made on the public lands before entry or consummation of title from the General Government.

6th. And where the State law indulges a purchaser with an imperfect title in suing and recovering possession, which his title may or may not ever be perfected, such party voluntarily subjects himself to all the provisions of the State law in respect to such suits, and can only recover rents before or after suit, according as such State laws may permit; no law of the United States or any other law being capable of affecting the right of the parties under such extraordinary remedy.

7th. That in any event, in assessing damages for rents, the jury should deduct from the gross rents the value of all improvements made by the owners before this suit was brought upon the premises sued for.

Each and all which instructions the court refused to give.

To which decisions and proceedings of the court in refusing to give any of said instructions defendants excepted at the time, and had time given them until now to tender their exceptions in respect thereof.

And now to the end to save and preserve of record all the evidence aforesaid, and all the points, questions, and exceptions aforesaid, the said defendants here now present this their bill of exceptions in respect thereof, and pray the same may be signed, sealed, and made of record herein; which is done now, time having been given for the purpose, at this same time.

Witness my hand and seal as judge this first day of September, A. D. 1855.

J. C. MURRAY, [SEAL.]
Special Judge.

STATE OF ARKANSAS,
County of Hot Spring.

I, Jno. P. Emerson, clerk of the circuit court and ex-officio recorder within and for said county, do hereby certify that the foregoing one hundred and seven pages contain a true, perfect, and complete transcript of the record in the cause therein mentioned.

In testimony whereof, I have hereunto set my hand as such clerk and ex-officio recorder, and affixed the seal of said circuit [L. S.] court, at office, in Rockport, on this 19th day of September, A. D. 1855.

JNO. P. EMERSON, *Clerk.*
By AUGUSTUS D. HARDY,
Deputy Clerk.

And afterwards, to wit, at the January term, A. D. 1856, were the following proceedings, to wit:

At this day come the said appellants and the said appellees by their attorneys, and this cause is continued until the next term.

And afterwards, to wit, at a supreme court of the State of Arkansas, begun and held at the court-house, in the city of Little Rock, on the 1st Monday of July, A. D. 1856, were the following proceedings on the 8th day of July of said term.

At this day come the said appellants by their attorney, and file their motion and affidavit for a special writ of certiorari to the clerk of said circuit court. Whereupon, the court being sufficiently advised of said motion, it is ordered that such special writ of certiorari in accordance with said motion be issued, returnable on the first Monday in August next; which said motion is in the following words:

Came said appellants, and say that the record in this cause is materially defective, as sent and certified from the court below, in this, to wit:

That in the court below, the plaintiffs therein waived the necessity of an affidavit for an appeal, and such appeal was thereon prayed by appellants, and granted by the court, and a recognizance was entered into therein to stay execution of the judgment.

That these proceedings were all entered of record therein, and formed part of the record and proceedings.

That, in sending up a transcript to this court, the clerk has wholly omitted therein the above proceedings.

Wherefore they pray for a writ of certiorari herein to the court below, to certify and send up said omitted proceedings, or a perfect and full transcript of all said proceedings, to the end that full justice may be done in the premises.

And they will ever pray, &c.

H. M. RECTOR.

Sworn to and subscribed in open court, July 8, 1856.

L. E. BARBER, *Clerk.*

And afterwards, to wit, on the day and year aforesaid, the clerk of said supreme court issued said writ of certiorari in the following words:

STATE OF ARKANSAS,
In the Supreme Court.

The State of Arkansas to the clerk of the circuit court of Hot Spring county, greeting:

Whereas at a supreme court of the State of Arkansas, at the July term, A. D. 1856, in a case therein then pending, wherein Henry M. Rector et al. are appellants, and William H. Gaines et al. are appellees, it was, on motion of said appellants, by our supreme court ordered, that a special writ of certiorari be issued to you directed, returnable on the first Monday in August next, commanding you to certify to our said supreme court a true and certified transcript of the motion for appeal, waiver of the affidavit required by law, grant of appeal and recognizance entered into, as the same are of record in said cause in the circuit court of Hot Spring county; you are therefore hereby commanded that you certify to our supreme court, at the city of Little Rock, on the first Monday in August next, a true copy of said motion for appeal, waiver of affidavit, grant of appeal and recognizance, as the same are of record in said circuit court, that our supreme court may, upon consideration of a complete record, cause to be done therein what of right should be done. Herein fail not, &c., and have then and there this writ, and make return how you shall execute the same.

In testimony whereof, I have hereto set my hand and affixed the [L. S.] seal of said court, at my office, in the city of Little Rock, this 8th day of July, A. D. 1856.

L. E. BARBER, *Clk.*

And afterwards, to wit, on the 4th day of August, 1856, said appellants filed the return to said writ, as follows:

STATE OF ARKANSAS,
Hot Spring County.

In obedience to the command of the within writ of certiorari, I have made a transcript of, and duly certified the motion for appeal, waiver of affidavit, grant of appeal and recognizance, as the same of record in said circuit court, and return the same attached hereto.

In testimony whereof, I have hereto set my hand as clerk of said

circuit court, and affixed the seal of said court, at my office, in the city of Rockport, in said county, this 12 day of July, A. D. 1856. [L. S.]

JNO. P. EMERSON, *Clk.*

And attached to said writ was the following transcript, to wit:

Proceedings had on the 1st day of September, 1855.

Came again the parties by attorney, and came also the jurors who on yesterday were respited until to-day, and the trial was resumed, and the residue of the evidence heard by the jury.

Pending the trial of this suit, the defendants excepted to several decisions of the court, and severally asked and obtained leave to tender their bills of exceptions during the term. After hearing the evidence adduced, and the charges of the court, (the counsel for the parties not wishing to argue the case to the jury,) the jury retired to consider of their verdict, and returned into court, and on their oath aforesaid return endorsed on the declaration their verdict, as follows: "We, the jury, find for the plaintiffs upon the issue joined herein, and assess their damages to the sum of four thousand seven hundred and twenty-five dollars, (say $4,725.)

JAMES S. TAYLOR, *Foreman.*

Therefore it is by the court considered that said plaintiff, William H. Gaines and Maria Gaines, his wife, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, do have and recover of and from the defendants, Henry M. Rector and Wilson Stedham, as well the possession of the premises claimed and described in their declaration in this behalf, being all that part of a certain tract or parcel of land designated upon the plat of the public surveys as the southwest quarter of section thirty-three, (SW. qr. sec. 33,) in township two south, of range nineteen west, (T. 2 S., R. 19 W.,) which lies north and above the dividing line heretofore established and observed by one Milas H. Woods and one John C. Hale, between their respective possessions on said quarter-section of land, and including all the houses, buildings, and improvements occupied and used by Warren & Stidham, during the summer of the year 1851, as a tavern stand, being all that part of said quarter-section of land, and the houses and improvements thereon, situate north or above the premises commonly known as Hale's tavern stand, and also the sum of four thousand seven hundred and twenty-five dollars (say $4,725) for their damages by them sustained in this behalf, and so as aforesaid assessed by the jury, as also all their costs by them expended in and about the prosecution of their suit in this behalf to be taxed, &c.; and the said plaintiffs have execution hereof by writ of possession for said premises, with command also to levy and collect said damages and costs, as provided by law in such cases.

Pending the trial, the defendants excepted to decision of the court in regard to instructions, and asked and obtained leave to tender their bill of exceptions during the term. On leave granted, the defendants tender their bill of exceptions herein, which is signed, sealed, and ordered of record herein.

The defendants pray an appeal to the supreme court, and the plaintiffs waive affidavit for appeal, and the appeal is granted.

On motion, it is ordered that said Henry M. Rector have leave to enter into recognizance with Moses R. Wood, Samuel Bender, John B. Bland, John G. Halliburton, and William W. Reyburn, and William Field, his securities, in the sum of twelve thousand dollars, conditioned according to law. Whereupon said H. M. Rector as principal, and Moses R. Woods, Samuel Bender, John B. Bland, John G. Halliburton, and William W. Reyburn and William Field, his securities, acknowledge themselves indebted to William H. Gaines and Maria Gaines, his wife, late Maria Belding, Albert Belding, Henry Belding, and George Belding, in the sum of twelve thousand dollars, to be levied of their goods and chattels, lands and tenements; to be levied on condition that Henry M. Rector and Wilson Stidham will prosecute their appeal with due diligence to a decision in the supreme court; and that if the judgment of the circuit court appealed from is affirmed, or their appeal dismissed, they pay whatever of debt, damages, and costs have been recovered against them by the judgment of the circuit court, together with the interest that shall accrue thereon, or that *the* will otherwise perform the judgment of the circuit court, and will also pay the costs and damages that may be adjudged against them in the supreme court upon their appeal. Whereupon it is ordered that all further proceedings herein be stayed until otherwise ordered by the supreme court.

STATE OF ARKANSAS,
County of Hot Spring.

I, Jno. P. Emerson, clerk of the circuit court in and for said county [and] State, do hereby certify that the foregoing pages contain a true, perfect, and complete transcript of an entry made in the aforesaid case from the records of my office.

[L. S.] In testimony whereof, I have set my hand and seal of said court on this 5th day of July, 1856.

JNO. P. EMERSON, *Clk.*

And afterwards, to wit, on the 13th day of October, A. D. 1856, in our said supreme court, were the following proceedings:

At this day come said appellants by their attorney, and, on motion, file their assignment of errors; which said assignment of errors is as follows:

Come said appellants and say that in the record and proceedings

aforesaid, as well as in the rendition of the judgment aforesaid, there is manifest error in this, to wit:

1. That the court below erred in admitting certain illegal and incompetent testimony on part of plaintiffs below.

2. That the court erred in excluding certain testimony offered by defendants below.

3. That the court gave certain improper instructions on behalf of plaintiffs below.

4. That the court refused to give certain instructions moved by defendants below.

5. That the judgment aforesaid was rendered in favor of plaintiffs below, when it ought to have been rendered in favor of defendants.

And for these and other errors manifestly appearing, they pray said judgment may be reversed, with costs.

HEMPSTEAD, FOWLER & CUMMINS, *Atto's.*

And afterwards, to wit, on the 20th day of October, at our said supreme court, were the following proceedings:

At this day come the said appellees by their attorney, and, on motion, it is ordered that their joinder in errors be filed; and thereupon the same is filed.

And at the same time come said appellants by their attorney, and this cause is submitted on the briefs filed, and by the court taken under advisement.

And afterwards, to wit, on the said first day of August, A. D. 1857, at said term of our supreme court held as aforesaid, to which term this cause was continued by operation of law, were the following proceedings, to wit:

Final judgment of Supreme Court.

This cause came on to be heard upon the transcript of the record of the circuit court of Hot Spring county, and was argued by counsel; on consideration whereof, the court being of opinion that there is no error in the proceedings and judgment of said circuit court in this cause, except as to the rejection of so much of the evidence offered by the defendants as conduced to prove that the improvements upon the land sought to be recovered were the improvements of the defendants, and in the verdict and judgment for damages by way of rents and profits, suggested to the appellees that the judgment of said circuit court would be reversed, unless they would remit herein the said damages so recovered; whereupon come said appellees by their attorney, and, on motion, file their remittitur damna, which is in the following words:

"And the said appellees by attorney come and say that they elect to and do remit the sum of $4,725, the sum adjudged to them

as and for damages in this behalf in said circuit court, and all right of action on the appeal bond herein.

WATKINS & GALLAGHER,
Atty. for Appellees."

It is thereupon considered by the court that the judgment of said circuit court in this cause rendered be and the same is hereby in all things affirmed, except as to the said sum of $4,7_5 damages herein remitted. It is further considered that said appellants recover of said appellees all their costs in this court in this cause expended, and have execution thereof.

Filing Writ of Error. Filing copy.

And afterwards, to wit, on the 10th day of August, A. D. 1857, the said appellants presented to the clerk of said supreme court a writ of error issued by the clerk of the circuit court of the United States for the eastern district of Arkansas, and allowed by the chief justice of our said supreme court, to remove said cause to the Supreme Court of the United States, and at the same time filed in the office of the said clerk a copy of said writ, which, with its endorsement, is in the following words:

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

The President of the United States to the honorable the judges of the supreme court of the State of Arkansas, greeting:

Because as in the record and proceedings, as also in the rendition of the judgment of a plea in a certain action of ejectment, which is in the said supreme court before you, between Henry M. Rector and Wilson Stidham, plaintiffs, and William H. Gaines, Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, defendants, manifest error has intervened, as is alleged, to the great damage of the said plaintiffs, as by the complaint appears; and we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city, on the first Monday of December next, A. D. 1857, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be done therein, to correct that error, what of right and according to the laws of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 3d day of August, in the year of our Lord one thousand eight hundred and fifty-seven, and the seal of the circuit court of the United States in and for the eastern district of Arkansas. [SEAL.]

Attest: WILLIAM FIELD, *Clerk.*

Allowed 10th August, 1857.

E. H. ENGLISH, *Ch. J. Sup. Ct. Arks.*

Endorsed: Rector et al. vs. Gaines et al. Copy of writ of error to Sup. Ct. United States, deposited in the office of the clerk sup. court Arks. by plffs. in error, as notice to defts. in error, 10th August, 1857. L. E. Barber, *Clk.*

And at the same time said plaintiffs in error filed their bond in error, which is in the following words:

Bond in Error.

Know all men by these presents, that we, Henry M. Rector as principal, and as securities, are held and firmly bound unto William H. Gaines, Maria his wife, Albert, Henry, and George Belding, in the sum of three thousand dollars, to be paid to the said William H. Gaines, Maria, Henry, and George aforesaid, their executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Whereas the above-named Henry M. Rector and one Wilson Stidham have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the supreme court of the State of Arkansas, in a cause therein pending, on appeal, wherein said Henry M. Rector and Wilson Stidham were appellants, and said William H. Gaines, Maria his wife, Albert Belding, Henry Belding, and George Belding were appellees:

Now, therefore, the condition of this obligation is such, that if the above-named Henry M. Rector and Wilson Stidham shall prosecute their said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, remain in full force and effect.

Witness our hands and seals this 3d of August, A. D. 1857.

HENRY M. RECTOR, [SEAL.]
ALFRED L. TRIGG, [SEAL.]
EDMUND BURGEVIN, [SEAL.]
CHAS. RAPLEY, [SEAL.]

Sealed and delivered in presence of.

Approved August 10th, 1857.

E. H. ENGLISH, *Ch. J. Sup. Ct. Arks.*

as and for damages in this behalf in said circuit court, and all right of action on the appeal bond herein.

WATKINS & GALLAGHER,
Atty. for Appellees."

It is thereupon considered by the court that the judgment of said circuit court in this cause rendered be and the same is hereby in all things affirmed, except as to the said sum of $4,7_5 damages herein remitted. It is further considered that said appellants recover of said appellees all their costs in this court in this cause expended, and have execution thereof.

Filing Writ of Error. Filing copy.

And afterwards, to wit, on the 10th day of August, A. D. 1857, the said appellants presented to the clerk of said supreme court a writ of error issued by the clerk of the circuit court of the United States for the eastern district of Arkansas, and allowed by the chief justice of our said supreme court, to remove said cause to the Supreme Court of the United States, and at the same time filed in the office of the said clerk a copy of said writ, which, with its endorsement, is in the following words:

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

The President of the United States to the honorable the judges of the supreme court of the State of Arkansas, greeting:

Because as in the record and proceedings, as also in the rendition of the judgment of a plea in a certain action of ejectment, which is in the said supreme court before you, between Henry M. Rector and Wilson Stidham, plaintiffs, and William H. Gaines, Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, defendants, manifest error has intervened, as is alleged, to the great damage of the said plaintiffs, as by the complaint appears; and we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city, on the first Monday of December next, A. D. 1857, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be done therein, to correct that error, what of right and according to the laws of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 3d day of August, in the year of our Lord one thousand eight hundred and fifty-seven, and [SEAL.] the seal of the circuit court of the United States in and for the eastern district of Arkansas.

Attest: WILLIAM FIELD, *Clerk.*

Allowed 10th August, 1857.

E. H. ENGLISH, *Ch. J. Sup. Ct. Arks.*

Endorsed: Rector et al. vs. Gaines et al. Copy of writ of error to Sup. Ct. United States, deposited in the office of the clerk sup. court Arks. by plffs. in error, as notice to defts. in error, 10th August, 1857. L. E. Barber, *Clk.*

And at the same time said plaintiffs in error filed their bond in error, which is in the following words:

Bond in Error.

Know all men by these presents, that we, Henry M. Rector as principal, and as securities, are held and firmly bound unto William H. Gaines, Maria his wife, Albert, Henry, and George Belding, in the sum of three thousand dollars, to be paid to the said William H. Gaines, Maria, Henry, and George aforesaid, their executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Whereas the above-named Henry M. Rector and one Wilson Stidham have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the supreme court of the State of Arkansas, in a cause therein pending, on appeal, wherein said Henry M. Rector and Wilson Stidham were appellants, and said William H. Gaines, Maria his wife, Albert Belding, Henry Belding, and George Belding were appellees:

Now, therefore, the condition of this obligation is such, that if the above-named Henry M. Rector and Wilson Stidham shall prosecute their said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, remain in full force and effect.

Witness our hands and seals this 3d of August, A. D. 1857.

HENRY M. RECTOR, [SEAL.]
ALFRED L. TRIGG, [SEAL.]
EDMUND BURGEVIN, [SEAL.]
CHAS. RAPLEY, [SEAL.]

Sealed and delivered in presence of.

Approved August 10th, 1857.

E. H. ENGLISH, *Ch. J. Sup. Ct. Arks.*

In testimony that the foregoing eighty-five pages contain a full, true, and complete transcript of the record and proceedings of said supreme court in said cause, except the opinion of the court delivered therein, and the briefs therein filed, I, Luke E. Barber, clerk of said supreme court, have hereto set my hand and affixed the seal of said court, at my office, in the city of Little Rock, State of Arkansas, this 12th day of November, A. D. 1857.

[SEAL.]

L. E. BARBER, *Clerk.*

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

The President of the United States to the honorable the judges of the supreme court of the State of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in a certain action of ejectment which is in the said supreme court, before you, between Henry M. Rector and Wilson Stidham, plaintiffs, and William H Gaines, Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, defendants, manifest error has intervened, as is alleged, to the great damage of the said plaintiffs, as by their complaint appears; and we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city, on the first Monday of December next, A. D. 1857, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said supreme court may cause to be done therein, to correct that error, what of right and according to the laws of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 3d day of August, in the year of our Lord one thousand eight hundred and fifty-seven, and the seal of the circuit court of the United States in and for the eastern district of Arkansas.

[SEAL.]

Attest: WM. FIELD, *Clerk.*

Allowed, Aug. 10, 1857.

E. H. ENGLISH, *Ch. J. Sup. Ct. Ark.*

STATE OF ARKANSAS,
In the Supreme Court.

In obedience to the command of the within writ of error, and

the allowance thereof by the chief justice of our supreme court, I have made out and certified a full and true transcript of the record of said cause in said court, except as in the certificate thereto is excepted.

In testimony whereof, I, Luke E. Barber, clerk of said supreme court, have hereto set my hand, and affixed the seal of said court, at my office, in the city of Little Rock, this 12th day of November, A. D. 1857.

[SEAL.]

L. E. BARBER, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

To William H. Gaines, Maria his wife, Albert Belding, Henry Belding, and George Belding.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Arkansas, wherein Henry M. Rector and Wilson Stidham are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Ebert H. English, chief justice of the supreme court of Arkansas, this the 7th day of August, A. D. 1857.

E. H. ENGLISH.

We acknowledge due service of this citation, August 10, 1857.

WATKINS & GALLAGHER.